113-756

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 886.

WILLIAM D. HARDIN, APPELLANT,

vs.

BLAND P. BOYD, ADMINISTRATOR OF JOHN D. WARE, DECEASED; EMMA WARE, J. L. LETT, AND MARY N. LETT, HIS WIFE, J. P. MOSES, AND SUE MOSES, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JULY 24, 1884.

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1 Be it remembered that on the 26th day of October, 1881, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Bland P. Boyd *et al.*, by U. M. and G. B. Rose, Esqs., their solicitors, and filed therein a bill of complaint on the chancery side of said court against William D. Hardin *et al.*, which is in the words and figures following, to wit:

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

BLAND P. BOYD, who sues as administrator of the estate of John D. Ware, deceased; J. L. Lett & Mary N. Lett, his wife; J. P. Moses and Sue Moses, his wife; Thomas Klyce & Maggie Klyce, his wife, and Emma Ware, Plaintiffs,

v.

WILLIAM D. HARDIN & LIDA C. HARDIN, his wife; JOHN MURRY & JAMES H. MURRY, Defendants.

To the judges of said court in chancery sitting:

Your orators, Bland P. Boyd, who sues as administrator of the estate of John D. Ware, deceased; J. P. Moses and Sue Moses, his wife; Thomas Klyce and Maggie Klyce, his wife; Emma Ware, who are all citizens of the State of Tennessee, except the said

2 J. L. Lett, *J. L. Lett*, and Mary N. Lett, his wife, who are citizens of the State of Missouri, bring this bill against William D. Hardin and Lida C. Hardin, his wife; John Murry and James H. Murry, who are all citizens of the State of Arkansas; and thereupon they show as follows:

The said Mary N. Lett, now the wife of said J. L. Lett; Sue Moses, now the wife of said J. P. Moses; Maggie Klyce, now the wife of said Thomas Klyce, and the said Emma Ware are the only children and heirs-at-law of John D. Ware, deceased, who lived in Brownsville, in the State of Tennessee for many years next preceding his death.

On the 28th day of March, 1871, said John D. Ware executed to the defendant, William D. Hardin, a bond for title, which recited that he had sold to said Hardin an undivided half of the following lands:

The southwest $\frac{1}{4}$ of Sec. 22, the northwest $\frac{1}{4}$ of section 27, the north $\frac{1}{2}$ of $\frac{1}{2}$ of section 28, the east $\frac{1}{2}$ of the west $\frac{1}{2}$ of Sec. 15, the east $\frac{1}{2}$ of the southwest $\frac{1}{4}$ of section 10; an undivided interest, containing $155\frac{222}{1000}$ acres, of a Spanish grant or confirmation in the name of Augustus Gonzier, No. 2931, lying on both sides of the military and on both sides of the Fifteen-Mile Bayou, and mostly in section 28 and *and* the north quarter ($\frac{1}{4}$) of section 29. Said lands all lying in township 7 north, of range 8 east, of 5th prin. me'd., being

3 situate in the county of Crittenden and State of Arkansas, for which said John D. Ware was to receive the sum of twenty thousand dollars, one-half in cash, and the other half to be paid in the county warrants of said county, to be paid on the 1st day of January, 1872, conditioned that said Ware should make a deed to said Hardin

on payment of said purchase-money as agreed therein, with some other provisions not necessary to be noticed in this bill.

A copy of said bond for title is hereto annexed, marked "Exhibit A," and made part hereof.

At the time of said sale the interest in the lands agreed to be conveyed by said title bond was worth at least the sum of fifteen thousand dollars.

At the time of the making of said title bond said John D. Ware was quite old, and was extremely infirm from ill health, so much so that he was not capable of attending to business himself, but was compelled to rely on the judgment and actual assistance of others in all important affairs. He had formerly been associated in business with said William D. Hardin, and reposed in him the most implicit confidence, particularly with regard to all matters touching his lands in Arkansas, as said Hardin had long resided in the
4 county wherein the lands were situated, and knew the value of all kinds of property in that county, and was acquainted extensively with the planting interest of that county. Said Hardin was also known to said Ware a man of fine business capacity, and was not known to him as a dishonest person, or as one who would seek to make any personal profit out of his infirmities and misfortunes. This was, however, what the said William D. Hardin was prepared to do, knowing that said Ware must soon die, and that he could not be of any farther use to him.

He knew that the warrants of said county were much depreciated; that they were not worth more than ten cents on the dollar of their face value, but, in order to cheat and defraud a man that was old and sick, too decrepit to defend himself against misrepresentation coming from one upon whom he relied for friendly advice, he applied to said Ware to purchase said undivided interest in said lands, offering to pay for the same in county warrants of said county, telling him that said warrants were worth seventy-five cents on the dollar of the face value thereof, and would readily sell at that price. Said Hardin very well knew that, in his helpless condition, said Ware would believe absolutely whatever he told him, and he did believe this false and fraudulent statement, without doubt or question; and it was by reason of this false
5 statement alone that he was led into the execution of said bond for title, by which he bound himself to convey said lands for less than one-seventh of their value.

The said Harding, aiming to get the lands as nearly for nothing as possible, did not pay the ten thousand dollars, as prescribed in said bond for title. His real agreement was to pay the prescribed cash payment in Crittenden county warrants. He only paid the sum of five thousand four hundred dollars, all in said depreciated warrants, saying to Ware that he had no more warrants with him at the time, but that he would get them at an early day and would hand them to him. He expected that the said Ware would die soon, or that in any event he would, in the weak and languishing condition to which he was reduced, soon forget all about the matter. At any rate, he never made any farther payment.

Soon after obtaining the said bond for title, said William D. Hardin went into possession of the lands named therein, and he has continued to hold them ever since.

Said John D. Ware continued to decline in health after the making of said title bond, until his death, which occurred on the 6th day of December, 1871.

6 He died intestate, leaving as his only heirs at law said Mary N. Lett, Sue Moses, Thomas Maggie Klyce, and Emma Ware. Soon after the death of said John D. Ware your orator, Bland P. Boyd, sued out letters of administration on his estate in the State of Tennessee, and is now engaged in winding up said estate.

Soon after the death of said John D. Ware, said William D. Hardin, with a view of consummating his said fraudulent scheme for getting a title to said lands without paying for them, procured his brother, Lucian D. Hardin, to sue out letters on his estate in Crittenden county, Arkansas. By collusion with his said brother, said William D. Hardin obtained from the court having probate jurisdiction in said county an order of allowance in favor of said William D. against the estate of said John D. Ware, for the sum of $2,333.65, on the 30th day of July, 1872, as will appear by reference to a copy of the order making said allowance, hereto annexed, marked "Exhibit B," and made part hereof. At that time the said estate did not owe him anything, as he well knew; but, on the contrary, he owed the estate the balance of the said purchase-money of said interest in said lands.

7 In order that the course pursued by these two brothers to defraud said estate may be made apparent to your honors, your orators now call attention to the paper hereto annexed, marked "Exhibit C," and made part hereof, and particularly also to the certificate annexed by the clerk of the probate court of said county. This paper, purporting to be in the order of said probate court, is written on three half sheets of ordinary letter paper, and is pasted between pages 408 and 409 of Record D of said probate court, as will appear by the certificate of the clerk attached to said "Exhibit C." The said paper is in the handwriting of one C. W. Bryant, who was then an attorney, acting as the attorney of said William D. Hardin.

Your orators deny that said paper was ever entered on record, and they deny that it was ever made an order of said court.

This paper purports that said Lucian B. Hardin, as administrator of said estate, filed a petition in said probate court, or rather before the clerk thereof, showing that on the 28th day of March, 1871, said John D. Ware had executed to said William D. Hardin the bond for title hereinbefore referred to, and that said William D. Hardin had paid to the administrator the sum of ten thousand dollars in county scrip, as required by said bond for title, on

8 the 1st day of January, 1872, the same being in full payment of the balance of the purchase-money due on said lands, and directing the administrator to execute to said William D. Hardin "a good and sufficient deed for the said lands described

herein and more fully set forth, conveying with general covenants to said W. D. Hardin the undivided half interest and the lands aforesaid, and all interests and estates hereafter accruing to the said J. D. Ware in said lands, or through J. D. Ware to the same."

This order purports to have been made on the 15th day of January, 1872.

On the 23d day of the same month said Lucian B. Hardin, by his deed of that date, acting as administrator of said estate, conveyed, or attempted to convey, the lands mentioned and described in said title bond to said William D. Hardin, as will be seen by reference to a copy of said deed herewith filed, marked Exhibit D, and made part hereof.

On the 10th day of July, 1877, said William D. Hardin, by his deed of that date, conveyed said undivided half of said lands to his wife, the defendant, Lida C. Hardin, in fee simple. A copy of said deed is herewith filed, marked "Exhibit E," and made part hereof.

Said deed was made without any consideration.

9 The defendants, John Murry and James H. Murry, are in possession of said lands as tenants, holding under said William D. Hardin and wife.

The said warrants that came to the hands of said Lucian B. Hardin, as administrator as aforesaid, were by him sold at fifteen cents on the dollar, and the money arising from the sale was paid on the said claim fraudulently allowed against the estate in favor of said William D. Hardin as aforesaid.

Said administrator in Arkansas also had in his hands a claim against one A. J. Cunningham for about $1,100, which was collected by him, and the money arising therefrom was by him paid over partly on the balance due on said fraudulent claim and allowance, and there being still a remainder over of said money, it was used to pay the fees charged by said C. W. Bryant for his services as attorney for said W. D. Hardin in the matters herein mentioned.

The records of said probate court show that on the 21st day of March, 1873, said Lucian B. Hardin filed his first annual set-

10 tlement as administrator as aforesaid, which was on the same day approved by said probate court.

He also on the same day tendered his resignation as such administrator, and was on the same day discharged from liability as such. And then, on the same day, on the written application of said W. D. Hardin, the said C. W. Bryant was, by said court, appointed administrator *de bonis non* of said estate; who was then directed to give bond as such administrator in the penal sum of ten thousand dollars, but who proceeded to qualify and act as such administrator without giving any bond whatever.

No papers relating to said estate are to be found in the office of the clerk of said probate court.

Said William D. Hardin was the clerk of said probate court from the 28th day of January, 1873, until January 4, 1875, and your orators charge that during that time he caused all of said papers to be destroyed for the purpose of concealing the frauds perpetrated by him as aforesaid.

The annual value of the rents of the undivided half of the
11 lands mentioned in said bond for title, since the time that said W. D. Hardin obtained possession thereof down to this time, has been about eight hundred dollars, which has all been by him appropriated by him to his own use.

For the frauds aforesaid your orators pray that the said bond for title, and the said deeds made by Lucian B. Hardin to said William D. Hardin, and by the latter to said Lida Hardin, his wife, may be set aside for fraud; that an account may be taken of the said rents and profits, and of the value of the county warrants delivered by said William D. Hardin, and that your orators may have a personal decree against said defendants for any balance that may be found to be justly due to them; that a decree may be rendered quieting the title of the plaintiffs herein to said lands against all claims of the said defendants, and for such other relief as equity may require, or, if thought proper, that the court may give a decree for the purchase-money due on said lands, and that the plaintiffs be decreed to have a lien on said lands for the payment thereof, and that said lien be foreclosed; and for process of subpœna against the said
12 William D. Hardin, Lida C. Hardin, John Murry, and James H. Murray, and that they may be required to answer this bill, but not under oath, their oath being here waived.

U. M. & G. B. ROSE.

Exhibit A to Bill.

J. D. Ware to W. D. Hardin. Bond, &c.

State of Arkansas, *Crittenden County:*

Know all men by these presents, that I, John D. Ware, of the county of Crittenden, State of Arkansas, am held and firmly bound unto Wm. D. Hardin, county and State aforesaid, in the sum of twenty thousand dollars. Sealed with my seal, and dated this 28th day of March, 1871.

The condition of the above obligation is such that the above-bounden John D. Ware has this day sold to the said Wm. D. Hardin all the following described lots or parcels of land, to wit:

The southwest quarter of section twenty-two, and the northwest quarter of section twenty-seven, containing three hundred and twenty acres, upon which there is a brick dwelling and other out houses; also the north fractional half of section twenty-eight, containing one hundred and ninety acres (the same, more or less); also the east half
13 of the west half of section fifteen, containing one hundred and sixty acres; also the east half of the southwest quarter of section ten; also an undivided interest, containing one huddred and fifty-five & $\frac{22}{100}$, of a Spanish grant or confirmation in the name of Augustus Gonzer, No. 2931, lying on both sides of the military road and on both sides of Fifteen-Mile Bayou, and mostly in section twenty-eight, and known as the Mill Seat Bayou tract, on the Berry Anthony tract of land, for three hundred and twenty arpens or two hundred and seventy-two & $\frac{22}{100}$ acres; the north-

east fractional quarter of section twenty-nine, lying north of lake, containing one hundred and thirty acres; said lands all lying in township seven north, of range eight east, containing in all about one thousand and fifty-three & $\frac{34}{100}$ acres, lying and being situated in Crittenden county, Arkansas. And the said John D. Ware has this day granted, bargained, and sold the lands aforesaid to the said William D. Hardin, and his heirs and assigns and legal representatives forever, for the sum of twenty thousand dollars, to be paid in the manner following: Ten thousand dollars is to be paid upon the delivery of these presents, the receipt whereof is hereby acknowledged, and the said W. D. Hardin and his legal representatives forever released from the payment thereof, and ten thousand dollars
14 in Crittenden county scrip or treasury orders on the 1st day of January, 1872, upon the payment of the sums aforesaid being made, the said John D. Ware, for himself and his legal representatives, doth covenant and agree to and with the said W. D. Hardin and his legal representatives to execute a good and sufficient deed of conveyance to the said W. D. Hardin and his legal representatives the lands aforesaid, and fixtures and appurtenances, rights and privileges thereto belonging, with full and general warranty and covenants for all the right, title, interest of the said John D. Ware in and to the lands aforesaid, the same being an undivided half [of] said lands and interests after accruing. Now this instrument further witnesseth, that if the said John D. Ware shall make the deed aforesaid according to the conditions of the bond above written, then, for the better security of the said W. D. Hardin, for the sum of ten thousand dollars, this day paid to the said John D. Ware, according to the terms of the above instrument, hath granted, bargained, and sold the lands above described to the said W. D. Hardin and his legal representatives all the following-described lands lying in the county of Crittenden, State of Arkansas: The S. W. $\frac{1}{4}$ Sec. 22 and N. W. $\frac{1}{4}$ of Sec. 27, containing 320 acres; also the north fractional half of Sec. 28, containing 190 acres,
15 more or less; also the E. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of Sec. 15, containing 160 acres; also the E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ Sec. 10; also an undivided interest, containing 155 22-100 acres of a Spanish grant in the name of Augustus Gonzee, No. 2931, lying on both sides of the military road, and on both sides of the 15-mile bayou; the northeast fractional quarter of Sec. 29, containing one hundred and thirty acres, all lying in township 7 N., R. 8 E., containing about 1,053 34-100 acres; and the said John D. Ware doth covenant, for himself and legal representatives, to and with W. D. Hardin, that in case the deeds of conveyance are not made, that the said sum of ten thousand dollars is a lien and incumbrance upon the, all the, lands mentioned in this mortgage, and all the lands described in the conditions of the foregoing bond. To have and to hold the same, together with all the tenements and appurtenances thereto in anywise belonging, according to the conditions of the above bond, and for the said sum of ten thousand dollars, if the said John D. Ware, or his legal representatives, shall fail to make the conveyance aforesaid according to the conditions aforesaid.

In testimony whereof, I hereunto set my hand and seal, this 28th day of March, 1871.

JOHN D. WARE. [SEAL.]

Witness: C. W. BRYANT.

16 STATE OF ARKANSAS, *Crittenden County:*

I, Thos. L. Daugherty, probate — in and for Crittenden county, Arkansas, by authority invested in me to take acknowledgements of conveyances, do certify that John D. Ware, whose own proper signature is annexed to the foregoing instrument, and who is to me personally known, appeared before me this day in person and acknowledged that he executed the foregoing instrument for the several considerations and purposes therein contained; that the same was his free act and deed.

Given under my hand and seal, this 28th day of March, 1871.

THOS. L. DAUGHERTY,
Probate & County Judge.

STATE OF ARKANSAS, *County of Crittenden:*

I, John Swepston, clerk of the county court and *ex-officio* recorder, do certify that the foregoing is a true copy of the original, filed for record on the 28th day of April, 1871, and duly recorded this the 21st day of June, 1871.

JOHN SWEPSTON,
Clerk and Recorder.

17 *Certificate of Record.*

STATE OF ARKANSAS, *County of Crittenden:*

RECORDER'S OFFICE.

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* recorder within and for said county, do hereby certify that the annexed and foregoing is a true and complete copy of the bond, &c., as appears of record in book "M," pages 598, 599, 600.

Witness my hand and official seal, at office, in Marion, this 20th day of May, A. D. 1881.

[L. S.] A. H. FERGUSON, *Clerk and Recorder,*
By E. R. HIGGS, *D. C. & R.*

EXHIBIT B.

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered that at a probate court begun and held at the clerk's office, on Monday, the 15th day of July, 1872, it being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding, the Honorable M. H. Wing, judge of said court. and was also in due attendance W. D. Hardin, sheriff (by his deputy, E. B. Lewis), and John Swepston, clerk,
18 (by his deputy, S. P. Swepston); and, when the court was declared duly opened according to law, the following proceedings were had, to wit:

And August the 30th, being one of the days of July term, 1872' the following proceedings were had, to wit:

Estate of JOHN D. WARE, Dec'd. L. B. HARDIN, Adm'r.

On this day the claim of W. D. Hardin against said estate for two thousand three hundred and thirty-three dollars & sixty-five cents is allowed and classed in class No. five (5).

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* clerk of probate court within and for said county and State aforesaid, do hereby certify that the annexed and foregoing is a true and perfect copy of the opening order at the July term, 1872, of the probate court, as appears on page 428; and also the order allowing the claim of W. D. Hardin against the estate of John D. Ware, dec'd, as appears on page 438 of Probate Record D, in my office.

In testimony whereof, I have hereunto set my hand and
19 affixed the seal of said court, this 20th day of May, A. D. 1881.

[L. S.] A. H. FERGUSON,
Cir. C't and ex-officio Probate Clerk & Recorder,
By E. R. HIGGS, *D. C. & R.*

EXHIBIT C TO BILL.

Probate Record.

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered that at a probate court of said county, begun and holden at the clerk's office (there being no court-house in said county), in the town of Marion, in said county, on the 15th day of January, 1872, same being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding the Honorable Thomas L. Dougherty, judge of said court; and was also in due attendance W. D. Hardin, sheriff of said county, and John Swepston, clerk of said court; and, when the court was declared duly opened according to law, the following proceedings were had, to wit:

In the Matter of the Estate of J. D. WARE, Dec'd.

20 And now on this day comes L. B. Hardin, duly qualified and appointed administrator of the estate of J. D. Ware, dec'd, whose bond, with sufficient security, has been approved by the court at the present term thereof, and now on file in the office of the clerk of this court, and by petition shows to the court that on the 28th day of March, 1871, said J. D. Ware executed to one W. D. Hardin his bond in the sum of twenty thousand dollars, to be void on the following conditions, to wit: That on the 1st day of January, 1872, upon the payment to said J. D. Ware, or his legal representatives, by said W. D. Hardin the sum of ten thousand dollars in the scrip or treasury warrants of Crittenden county, Arkansas,

he, the said John D. Ware, or his legal representatives, would execute to the said W. D. Hardin a good and sufficient deed to an undivided half interest in and to the following described lands, to wit:

The southwest ¼ of Sec. 22, the N. W. ¼ of Sec. 27, the north fl. ½ of section 28, the east ½ of the west ½ of section 15, the east ½ of the southwest ¼ of section 10, an undivided interest, containing $155\frac{22}{100}$ acres of a Spanish grant or confirmation in the name of
21 Augustus Gonzier, No. 2931, lying on both sides of the Military —and on both sides of the Fifteen-Mile bayou, and mostly in Sec. 28, and the north quarter (¼) of Sec. 29, said lands all lying in township 7 north, of range 8 east, 5th prin. mid., being situate in the county of Crittenden and State of Arkansas, together with all estate, right, title, or interest accruing to said J. D. Ware in or to the said lands to or through the said J. D. Ware, all which is referred to in said title-bond, duly executed and recorded in Book "M" of the record of Crittenden county and said State on pages 598, 599, 600, lands aforesaid being more specifically described and set out in said bond referred to; and the said L. B. Hardin further showing to the court that on the said 1st day of January, 1872, the said W. D. Hardin paid to him, the said administrator, the said sum of ten thousand dollars in the scrip or treasury warrants of Crittenden county pursuant to the conditions of said bond, and the same the last due and unpaid upon said lands; and the court being fully advised in the premises, it is ordered, adjudged, and decreed that L. B. Har-
22 din, as administrator of said J. D. Ware, pursuant to the conditions of said title-bond, forthwith execute to said W. D. Hardin a good and sufficient deed for the said lands described herein and more fully set forth, conveying with general warrantees and covenants to said W. D. Hardin the undivided half interest [in] the lands aforesaid and all interests and estate hereafter accruing to the said J. D Ware in said lands, or through J. D. Ware to the same.

Jan'y 15, 1872.

THOS. L. DOUGHERTY, *J'dge.*

23 STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* probate —, within and for the said county and State, do hereby certify that the foregoing three and half pages is a true and perfect copy of a purported order, written on three half sheets of ordinary letter paper and pasted between pages 408 & 409 of Probate Record D, now in my office.

In testimony of the truth whereof, I hereunto set my hand and affix the seal of my office, this 9th day of June, A. D. 1881, at my office at Marion.

[L. S.] A. H. FERGUSON, *Clerk.*

24 EXHIBIT D TO BILL.

This indenture, made and entered this 23d day of January, 1872, by and between L. B. Hardin, administrator of the estate of J. D. Ware, dec'd, of the county of Crittenden, and State of Arkansas, and

W. D. Hardin, of said county and State, witnesseth: That whereas, on the 28th day of March, 1871, for and in consideration of the sum of twenty thousand dollars (ten thousand in hand paid, & ten thousand dollars to be paid on the 1st day of January, 1872. in the scrip*t* or treasury warrants of Crittenden county), granted, bargained, and sold to the said W. D. Hardin one thousand and fifty-three and thirty-four hundredths acres of land that will be more specifically described hereafter. And that on the 28th day of March, 1871, the said J. D. Ware executed his title-bond in the sum of twenty thousand dollars to the said W. D. Hardin; that he, the said J. D. Ware, or his legal representatives would, upon the payment & receipt of last-mentioned ten thousand dollars in Crittenden county scrip*t* or treasury orders to the said W. D. Hardin, a good and sufficient deed to the said one thousand & fifty-three and thirty-four hundredth-
acres described and set out in said bond, in this matter
25 made and provided and recorded in the records of Crittenden
county, and said State, in Book "M," on pages 598, 599, and 600, all of which is here referred to, and its provisions and conditions made part of this indenture; and that on the 6th day of December, 1871, said J. D. Ware died intestate, and that afterwards, to wit, on the 23d day of December, 1871, said Lucian B. Hardin, qualified as administrator of the estate of J. D. Ware, and received letters to act as such administrator, and filed good and sufficient bond, which said bond was approved by the court of probate for said county, at its January term, 1872, holden at the court-house in the town of Marion, in said county, on the 15th day of January, 1872; and at an adjourned term of said court, holden as aforesaid, on the 17th day, made an order in the matter of the estate of J. D. Ware, dec'd, that the L. B. Hardin, administrator of the estate of J. D. Ware, should forthwith execute to the said W. D. Hardin a good and sufficient deed according to the conditions of said bond herein referred to, which said order of said court was duly entered on the records of Crittenden county on Probate Record, pages ——, all which is herein referred to: Now, therefore, I, L. B. Harding, administrator estate of J. D. Ware, dec'd, in consideration of the
sum of ten thousand dollars in the scrip or treasury warrants
26 of Crittenden county, to me in hand paid by the said W. D.
Hardin, the receipt whereof is hereby acknowledged in my capacity as such administrator, and by virtue of the said title-bond herein referred to, and by virtue of the order of the probate court herein referred to, have this day granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said W. D. Hardin an undivided half-interest in the lands aforesaid described, as follows: The southwest fourth ($\frac{1}{4}$) of section twenty-seven (27), three hundred and twenty acres, upon which there is a brick dwelling and out-houses; the north fractional half ($\frac{1}{2}$) of section twenty-eight (28), containing one hundred and ninety acres, more or less; the east half ($\frac{1}{2}$) of the southwest half ($\frac{1}{2}$) of section fifteen (15), containing one hundred and sixty acres; the east half of S. west fr'l $\frac{1}{4}$ of section ten (10); an undivided interest containing one hundred and fifty-five and twenty-two hundredths acres of a Spanish grant or

confirmation in the name of Augustus Gonlare, No. 2931, lying on both sides of the military road and on both sides of the Fifteen-Mile bayou, and mostly in section twenty-eight (28), and known
27 as the Mill Seat, Bayou tract, or Berry Anthony tract of said land for three hundred and twenty arpens, or $272\frac{2}{100}$ acres; the northeast fourth of section twenty-nine (29) lying north of the lake, containing 130 acres of land, all in township seven (7) north, of range eight (8) east, of fifth principal meridian, and situate in the county of Crittenden aforesaid, together with all the rights, title, interest, — estate of J. D. Ware in and to said lands, or that may hereafter accrue to said J. D. Ware in and to said lands, and all rights and privileges arising or in any manner appertaining to said Ware to the lands.

Witness my hand, this day and year first above written.

L. B. HARDIN,
Administrator Estate of J. D. Ware.

STATE OF ARKANSAS, *County of Crittenden:*

I, John Swepston, county clerk in and for said county, do certify that L. B. Hardin, whose signature appears to the annexed and foregoing deed, and who is personally known to me to be the person executing the same, appeared before me in person, this day in person, and did acknowledge that he executed the same
28 for the consideration and purposes therein contained.

Witness my hand and seal of said court, this January 23d, 1872.

[SEAL.] JOHN SWEPSTON, *Clerk.*

STATE OF ARKANSAS, *County of Crittenden:*

I, John Swepston, clerk of the circuit court and *ex-officio* recorder for said county, do certify that the foregoing instrument of writing is a true and complete copy of the original filed in this office for record on the 25th day of January, A. D. 1872, and duly recorded this 16th day of February, A. D. 1877.

JOHN SWEPSTON, *Clerk.*
By P. C. HIGGS, *D. Clerk.*

Certificate of Record.

STATE OF ARKANSAS, *County of Crittenden:*

RECORDER'S OFFICE.

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* recorder within and for said county, do hereby certify that the annexed and foregoing is a true and complete copy of the deed of conveyance as appears of record in Book "R," pages 465, 466 & 467.

Witness my hand and official seal at office in Marion,
29 this 20th day of May, A. D. 1881.

[L. S.] A. H. FERGUSON,
Clerk and Recorder.
By E. R. HIGGS, *D. C. & R.*

EXHIBIT E TO BILL.

This deed, made, executed, and delivered, this 10th day of July, A. D. one thousand eight hundred and seventy-seven, by and from William D. Hardin, of the first part, and Mrs. Lida C. Hardin, of the second part, all of the county of Crittenden and State of Arkansas—

Witnesseth, that the said W. D. Hardin, for and in consideration of the sum of ten dollars to him cash in hand paid by the said Mrs. Lida C. Hardin, the receipt of which is hereby acknowledged, and the further consideration of the natural love and affection that the first party has and holds for and unto his said wife, Lida C. Hardin, and the children she hath born and brought unto him, & being anxious to provide and secure to her and them a support and maintainance against all contingencies whatever, and the said first party being now not indebted, & the property herein conveyed not being encumbered, he, the said first party, for the considerations hereinbefore set forth, doth grant, bargain, sell, alien, and convey unto the said Lida C. Hardin, in fee-simple forever, as her sole and
30 separate property, the following property, real and personal, in Crittenden county, Arkansas, to wit:

Fifteen head of mules and horses now on the plantation of the said first party, and known as the Ware farm and the McClung or Dougherty farm; also twenty-five head of stock cattle, oxen and milch cows, now on said farm; also real estate, to wit, the undivided one-half of the southwest quarter of section twenty-seven (on which there is a brick dwelling-house and out-houses), containing one hundred and sixty acres of land; the undivided ½ of the east part of the Augestien Gonzales Spanish grant No. 2931 (lying on the mouth of the 15-mile bayou where the military road crosses), containing one hundred and fifty-five and twenty-two hundredth- of an acre; the undivided ½ of the north fractional half of section twenty-eight, containing one hundred and ninety acres, more or less; the und. ½ east ½ (half) southwest quarter of section fifteen; the und. ½ of the east ½ (half) of the southwest quarter of section ten; the und. ½ of the northwest quarter of section twenty-seven; the und. ½ of the west half of section twenty-two; the und. ½ north-
31 east quarter of section twenty-nine (29), containing one hundred and thirty acres. All the foregoing lands in township 7 N., R. 8 E., in said county; also all of the west half of the northeast quarter of section twenty-seven, eighty acres, & the southeast quarter of the northeast quarter of *of* section twenty-seven, forty acres of land; and the last 120 acres of land is known as the Dougherty or McClnng farm. All of the said lands lie in 77 N., R. 8 E., Crittenden county, to have and to hold unto the said Lida C. Hardin as her sole and separate property, and to her and her heirs and assigns forever; and the said W. D. Hardin doth covenant unto and with the said Lida C. Hardin, her heirs and assigns, that he hath good right and full power to make this conveyance; that said lands are free from all incumbrance; and that he will forever warrant and defend the title to the same against the claims and demands of all persons whomsoever.

Witness the hand and seal of the said first party, this day and date above written.

(S'g.) W. D. HARDIN. [SEAL..]

Witness:

S. P. SWEPSTON.

32 STATE OF ARKANSAS, } ss:
County of Crittenden, }

Be it remembered that, on this 17th day of July, A. D. 1877, before the undersigned, circuit clerk within and for the county aforesaid, personally came and appeared W. D. Hardin, who is personally known to me to be the same person whose signature appears to the annexed and foregoing instrument of writing as party thereto, and acknowledge the same to be his act and deed for the consideration and purposes therein mentioned.

Witness my hand and official seal at office in Marion, this 17th day of July, A. D. 1877.

[SEAL.] (S'g.) JOHN SWEPSTON, *Clerk.*

STATE OF ARKANSAS, *County of Crittenden:*

I, John Swepston, circuit court clerk and *ex-officio* recorder within and for the county aforesaid, do hereby certify that the above and foregoing is a true and perfect copy of the original deed filed in my office for record on the 17th day of July, 1877, and duly recorded on the 18 July, 1877.

(S'g.) JOHN SWEPSTON,
Clerk & ex-officio Recorder.

33 *Certificate of Record.*

STATE OF ARKANSAS, *County of Crittenden:*

RECORDER'S OFFICE.

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* recorder within and for said county, do hereby certify that the annexed and foregoing is a true and complete copy of deed from W. D. Hardin to Lida C. Hardin, as appears of record in book S, page 291 & 2.

Witness my hand and official seal at office in Marion, this 9th day of June, A. D. 1881.

[SEAL.] A. H. FERGUSON,
Clerk and Recorder.

34 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the — day of October, anno Domini one thousand eight hundred and eighty one, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Henry C. Cald-

well, District Judge, presiding and holding said court, the following proceedings were had, to wit, on December 23, 1881:

BLAND P. BOYD *et al. v.* W. D. HARDIN *et al.*

Come the defendants, W. D. Hardin and Lida C. Hardin his wife, by Thomas M. Peters, Esq., their solicitor, and file herein their separate answers and exhibits to W. B. Hardin's answer.

Which answers are as follows:

W. D. Hardin's Answer.

In the circuit court of the United States for the Eastern District of Arkansas.

BLAND P. BOYD, as Adm'r of Estate of JOHN D. WARE *et al.*, Plaintiffs,
vs.
W. D. HARDIN *et al.*, Defendants.

This defendant, W. D. Hardin, for himself alone, saving and reserving to himself all and all manner of exception and objec-
35 tion to the many errors, mistakes, misstatemens in the plaintiff's bill contained, for answer to the same, answers, says & state as follows, that is to say:

1. As to the parties mentioned in said bill as parties plaintiff in this action, in the first section, he is not so advised and informed as to be able to admit or deny the same, and he prays that they be strictly proven.

And he admits that the parties defendant, so far as he knows, are properly stated in said bill.

2. And defendant further says and states that he is not so advised and informed of the truth of the matters set out and stated in the second section of said plaintiffs said bill as to admit or deny the same, and he asks that the same, so far as he is concerned, be strictly proven as required by law.

3. And defendant says and admits that the matters stated and set forth in the third section of said bill are substantially true, so far as stated, but he says the whole facts are as follows, to wit: The said John D. Ware, in his lifetime, to wit, on March 28th, 1871, in the State of Arkansas, of his own motion, did grant, bargain, and sell to him (this defendant) the lands mentioned in said bill, and thereupon made and delivered to him (this defendant) the instru-
36 ment in writing, called a title bond, of the date of March 28, 1871, referred to and named in said bill; and thereupon he (said John D. Ware) put this defendant in possession of said lands under said instrument in writing referred to and named in said bill, and said original instrument in writing is hereto annexed and prayed to be taken and considered as a proper part of this answer, marked "Exhibit A X" hereto. And said sale was not otherwise than is recited in said instrument in writing, Exhibit A X, above said: and said contract of sale was honestly and fairly made on his part.

4. And further answering the fourth section of said bill, this defendant says and states that it is true that said John D. Ware agreed to receive, and was to receive, $20,000, to be paid in the manner stated in said instrument in writing named in the said fourth section of said bill; that is, $10,000 to be paid upon the delivery of said instrument and $10,000 in Crittenden county scrip, or Treasury orders, on the first day of January, 1872.

5. That the fifth section of said bill is admitted so far as it does not vary from said "Exhibit A X" abovesaid, and so far as it does so vary, it is untrue and false.

37 6. That section sixth of said bill is not true. Said lands were not worth more than defendant agreed to pay for the same as is shown in "Exhibit A X," and the deed of said L. B. Hardin hereinafter named and shown.

7. And defendant further says and states that the seventh section of said bill is not true as the matters therein are stated and set forth, except as hereinafterwards corrected and explained. It is wholly untrue and false that at the time of making said title bond, said John D. Ware, for any cause whatever, was not capable of attending to his own business himself. It is untrue that he was then compelled to rely on the judgment and actual assistance of others in all important affairs. He was then fully competent to comprehend and make said contract of sale of said lands. It is true that he (said Ware) had been associated in business with this defendant in the cultivation of his farm, in the year 1869, and if he reposed confidence in this defendant, it is false that such confidence was misplaced or used to his injury. But this defendant does not admit that any such confidence was ever reposed in him, as stated in said section of said bill. It is not true that this defendant had then long resided in the county wherein said lands were situated.

38 Said Ware was a shrewd business man, a successful farmer, and had an equal, if not better, knowledge of the value of all kinds of property in said county than this defendant. And this defendant was not better acquainted, especially with the planting interest of that county, than said Ware. And it is not known to this defendant that he was then or since or now known to said Ware, or any one else, as a man of fine business capacity. And it is false, as pretended, in said section of said bill, that this defendant was a dishonest person, or a person who would seek to make any personal profit out of said Wares' infirmities and misfortunes. The charge and pretense is utterly false and untrue that this defendant was then prepared to make any personal profit out of the infirmities and misfortunes, if such existed, (which is unknown to this defendant,) of said Ware of said contract of sale or otherwise, or in any manner whatsoever. This defendant did not know that said Ware must soon die and could not be of any further use to him. This statement is gratuitously false and wholly untrue. This defendant repeats and affirms that in all his conduct and dealings with

39 said Ware touching said sale of said lands by said Ware to him at and before the contract was concluded were fair, in good faith, and strictly honest. The sale was made as shown in said

title bond of March 28, 1871, at said Ware's instance, and on his own terms, and all the facts touching the same were as well known to said Ware as to this defendant, and said Ware was fully competent and capable of making the same. And he never complained of said contract as unfair to this defendant during his life, or asked to have the same rescinded, and offered to return to this defendant the consideration he (said Ware) had received or any part of it.

8. And defendant further says that the eighth section of said bill is false and untrue as the matters herein contained are stated and set forth, except as herein below corrected and explained.

Said Ware knew as well as this defendant the marked, true value of the warrants of said county. At the date of said sale of said lands to him (this defendant) they were esteemed to be worth about seventy-five cents on the dollar, but sometime after said sale they somewhat depreciated. But it is wholly and utterly false as alleged in said section of said bill last said, that "but in order to cheat and defraud a man that was old and sick, too decrepit to defend himself against misrepresentation coming from one upon whom he relied for friendly advice, he (this defendant) applied to said Ware to purchase said undivided interest in said lands, offering to pay for the same in county warrants of said county, telling him that said warrants were worth seventy-five cents on the dollar of the face value thereof, and would readily sell for that price." It is also false "that this defendant, said Hardin, very well knew that in his helpless condition said Ware would believe absolutely whatever he told him, and he did believe this false and fraudulent statement without doubt or question, and it was by reason of this false statement alone that he was led into the execution of said bond for title by which he bound himself to convey said lands for less than one-seventh of their value." But defendant says that said sale was fairly and honestly made, as shown in said "Exhibit A X," and wholly without fraud.

9. And defendant further answering says that the ninth section of said bill is false and untrue, as the matters therein stated are set forth and charged. It is not true, as alleged in said section, "the said Hardin, aiming to get the lands as nearly for nothing as possible, did not pay the $10,000, as prescribed in said bond for title." And it is not true, but false, as set forth and stated in said section ninth abovesaid, that "his real agreement was to pay the prescribed cash payment in Crittenden county warrants." But he says he made the payment as specified in said bond. And it is not true as alleged in said section last said that "he only paid the sum of five thousand four hundred dollars, all in said depreciated warrants, saying to said Ware that he had no more warrants with him at the time, but that he would get them at an early day and hand them to him." It is also untrue, as is alleged and stated in said section last above said, that "he expected that the said Ware would die soon, or that in any event he would in the weak and languishing condition to which he was reduced, soon forget all about the matter." And it is also untrue and false, as charged in said section,

that "at any rate he never made any further payment." But he says the truth is he made the payments as shown in said bond.

10. Defendant admits the tenth section of said bill. He went into possession of said lands on the execution of said bond, and held the same for himself until he conveyed the same to his wife, said Lida C. Hardin, that is, up to July 10, 1877, and since then
42 for her under said conveyance for her use, and as her property and the property of her children, as appears by said conveyance of July 10, 1877.

11. This defendant does not know whether said Ware continued to decline in health or not, and cannot admit it, but he believes he died intestate, as stated in said section eleventh of said bill. But this defendant does not know what heirs and children he left surviving him, or whether said Boyd is the administrator of his estate, and he demands proof of the same as required by law.

12. Defendant further says that the matters and things stated and charged in the twelfth section of said bill as set forth therein are untrue and false, except as hereinafterwards corrected and explained. It is wholly untrue and false that "soon after the death of said John D. Ware said William D. Hardin (this defendant), with a view of consummating his said fraudulent scheme for getting a title to said lands without paying for them, procured his brother, Lucius D. Hardin, to sue out letters on his estate in Crittenden county, Arkansas. By collusion with his said brother said William D. Hardin
43 obtained from the court having probate jurisdiction in said county an order of allowance in favor of said William D. against the estate of said John D. Ware, for the sum of $2,333.65, on the 30th day of July, 1872." But it is true that defendant's brother, Lucian B. Hardin, was properly and legally appointed the administrator of the estate of said John D. Ware; that letters of administration were duly issued to him, and he gave the bond required by law as such administrator of the estate of said John D. Ware, deceased, in the county of Crittenden, Arkansas, where said Ware left assets at his death. It is also true that said probate court had full power and exclusive jurisdiction of the matter of said appointment and the issue of said letters, and the taking of said bond of said Lucian B. Hardin as such administrator of the estate of said John D. Ware, deceased, in said county of Crittenden, and said State of Arkansas, and said order making said appointment and said proceedings were made wholly without fraud, and remain in full force and virtue and wholly unreversed and unset aside. And defendant here
44 now refers to a certified record of the proceeding in said probate court, hereto appended as an exhibit to this answer and prayed to be taken, treated and considered as a proper part hereof, marked Exhibit "B Y." It is also true that said probate court or court having probate jurisdiction did grant him said order for $2,333.65, as appears in said record; that at the time of the granting of said last said order for said sum of money said court had probate juriedistion both of the person and the thing, and said order last said remains in full force and virtue and wholly unreversed or set aside, and at the time of granting said order for said sum of

$2,333.65 said estate of said Ware was liable to him for the same. All which appears from said record "Exhibit B Y," above said, which is now here again referred to. And it is false that "at the time" the said order was granted "the said estate did not owe him (said William D. Hardin) anything as he well knew, but on the contrary he owed the estate the balance of said purchase-money of said interest in said lands," as is charged in said section twelfth of said bill, but the reverse is true.

45 13. This defendant says that said order and proceedings referred to in the thirteenth section of said bill is the true record of the order and proceedings of said court, as the same was made by the then judge of said court, the Hon. Thos. L. Dougherty, then the judge of said court, and was made and entered with his full knowledge and consent as such judge, and adopted and approved by said judge as his judicial order and proceedings in the matter before him as such judge of said court, and the same has so remained unaltered ever since as a veritable and true record of said court, and as such it is entitled to full credit and respect and enforcement. And defendant is advised it is according to the practice of said court, and the same was made in a matter properly and legally pending in said court; and so far as this defendant is concerned, it was superintended by his attorney, said C. W. Bryant, and not by this defendant; and the same was procured in the prosecution of the just rights of this defendant, and wholly without fraud or falsehood on his part; and the same is entitled to be upheld as a proper proceeding in said court; and

46 the same has remained since its entry, to wit, on the day of the date thereof, open to the inspection and knowledge of said plaintiffs, wholly without complaint or objection or attempt at correction until this day, now above nine years.

14. And this defendant, answering said fourteenth section of said bill, says he insists that said court had full jurisdiction of the persons and the subject-matter of said order; that same was made by said court in a regular proceeding and suit before it, and the same was duly made by the said court, and is valid and binding, and remains in full force and virtue, and wholly unrepealed or reversed, and that the facts therein recited are true, and they justify the granting the same; and the said deed of conveyance made by said Lucian B. Hardin, the administrator of the estate of said John D. Ware, bearing date January 23d, 1872, was legally and properly made, and is wholly without fraud, or made without any purpose or design to cheat or do injustice to said Ware or the plaintiffs or any of them, and the same was duly and properly executed and delivered, and it passes the title to the lands therein named and described in fee,

47 so far as the interests of said Ware, or the plaintiffs, or any of them, are concerned, to said William D. Hardin, and he has for himself and his said wife and children mentioned in his conveyance to Mrs. Hardin, as above said, for and during nine years and more, constantly and adversely to said Ware, and to plaintiffs, and each and all of them, held the same as above shown. And he here now refers to said deed of said Lucian B. Hardin, adm'x, as

above said, and prays that the same may be made and taken and considered and treated as a proper part of this answer, marked "Exhibit C W."

15. The fifteenth section of said bill is substantially true, and said deed is properly executed and acknowledged and recorded, and the same is valid and binding, as appears from "Exhibit C W," above said, and here now again referred to, and is here now insisted on as such.

16. This defendant, further answering, says that he admits the matters alleged and charged in the sixteenth section of said bill, except the allegation that "said deed was made without any consideration." This allegation is untrue & false. Said deed was made upon full and legal consideration.

48 17. This defendant, further answering, says that he excepts and objects to the seventeenth section of said bill as irrelevant and redundant, and he moves to strike out the same. And, further answering, he says it is false that any fraudulent claim or claims was or were allowed to him against said estate as that referred in said section fifteen of said bill. All the claims allowed to him against said estate were honest, *bona fide*, real, and for legal consideration, and all charges in said bill to the contrary are wholly false and untrue. Said payment or payments to him by said Lucian B. Hardin, as such adm'r as aforesaid, were so made upon debts real, *bona fide*, and fair, and so ordered by the court of probate aforesaid, and not otherwise.

18. And this defendant, further answering, says that he excepts and objects to the eighteenth section of said bill as irrelevant and redundant, and he moves to strike out the same. And he further says that said payment complained of in this section was properly and legally made, and not otherwise. And the same was not paid to him on any fraudulent claim or claims, and all charges in

49 said section to this import are utterly false and untrue.

19. And defendant, further answering, says the nineteenth section of said bill is irrelevant and redundant, and for this reason he moves to strike out the same.

20. And defendant moves to strike out the 20th section of said bill, because the same is irrelevant and redundant and does not concern him.

21. Defendant does not know whether the statements contained in the 21st section of said bill are false or true, and cannot admit or deny them. Said papers were not lost or destroyed or abstracted by him or his connivance; and all charges or intimations in said bill to that effect or intent are wholly false and untrue.

22. It is true that this defendant, said William D. Hardin, was the clerk of said probate court from the 7th day of March, 1873, until January 4th, 1875; but it is utterly false that "during that time he caused all of said papers to be destroyed for the purpose of concealing the frauds perpetrated by him as aforesaid."

23. Defendant says that the rents of said farm has not exceeded annually the sum of $400; and the most of this rent has been ex-

pended in permanent improvements on said lands which were
50 necessary and required thereon, as will be hereinafter shown.

24. And defendant, further answering said bill, says and states that all and every allegation and charge of fraudulent, unfair, and dishonest conduct and doing on the part of this defendant towards said John D. Ware, or any person or persons interested in his estate and property as made and set forth in said bill, however the same may be expressed, insinuated, or intended, are wholly and absolutely false and untrue in all and every particular, however made.

25. And defendant says that the charge and charges in said bill that his brother, Lucien B. Hardin, was procured to be appointed administrator of the estate of said John D. Ware, deceased, for any improper purpose to injure said estate or the said plaintiffs, or any of them, is utterly false and untrue.

Said Lucien B. Hardin was regularly and legally appointed administrator of said estate, and legally settled his said administration and was legally discharged, and performed all his acts and doings as such administrator in a regular way. All which more fully ap-
pears from the record of the proceeding of his said adminis-
51 tration hereto appended as Exhibit No. 2, which is prayed to be taken as part of this answer.

Plea.

And defendant says, by way of plea, that said Ware nor said plaintiffs have not had possession of said lands within seven years next before the commencement of this action.

Plea.

And defendant farther says, by way of plea, that said Ware nor said plaintiffs have not had possession of said lands within ten years next before the commencement of this suit, and are barred by lapse of time.

Demurrer.

And, for further answer, the defendant says he demurs to said bill, and he assigns for the causes of demurrer—

1. Said bill is without equity. It does not state facts sufficient to constitute a cause of action.

2. The said bill shows that it is a bill to rescind the sale of March 28, 1871, and it fails to show that the plaintiffs, after having received it, offered to return the consideration or purchase-money.

3. The bill shows it is a bill to remove a cloud from the title of plaintiffs, and it does not show that plaintiffs are in possession of the land at the filing of the bill.

4. The bill shows that the plaintiffs claim as heirs and
52 administrator- of the estate of deceased, and not by the same right.

5. The bill shows that all the plaintiffs are not entitled to recover, and if one fails, all must fail.

6. The bill shows that the administrator is barred by the statute of limitations of seven years.

7. The bill shows plaintiffs have slept upon their rights till lapse of time has barred the right to recover.

W. D. HARDIN.

PETERS & LYLES,
S. P. SWEPSTON,
Sols. for Def't.

Lida C. Hardin's Answer.

In the United States Circuit Court for the Eastern District of Arkansas. In Equity.

BLAND P. BOYD, who sues as the Adm'r of Estate of Jno. D. Ware, dec'd, & others, Plaintiffs,

v.

WM. D. HARDIN & others, Defendants.

This defendant, Lida C. Hardin, saving and reserving to herself all and all manner of objection and exception to the manifest errors and mistakes in complainants' bill of complaint contained, for answer thereto, says and states as follows, that is to say:

1. This defendant, said Lida C. Hardin, answers and says
53 that she is the legal wife of said William D. Hardin, and that she was regularly and legally married to him, in the county of Shelby, in the State of Tennessee, on the 23d day of June, 1873, and said marriage still remains in full force and virtue, and that she is entitled to all the rights of said wife of said William D. Hardin.

2. Further answering, she says she is not, and was not, acquainted with, and had no knowledge of the facts and matters stated and charged in said plaintiffs' said bill, which occurred before her said marriage, and she cannot answer the same save upon information and belief, as stated in her said husband's answer in this cause.

3. And further says that at and before her said marriage with said William D. Hardin, he, in order to induce her to marry him, promised her, in consideration of said marriage, that if she would and did marry him, he, said William D. Hardin, in consideration of said marriage, would settle upon her and convey to her, for her sole and separate use for her and her children, his lands and property, owned and claimed by him in the State of Arkansas, in some proper and legal manner, as required by the laws of said State. And in consideration of said promise she married him, and fully com-
54 plied with and performed her said promise, and thereafter, at her request, and in performance of said promise of marriage above said, he, said Hardin, made and delivered to her the deed of conveyance mentioned in plaintiffs' bill, and referred to as Exhibit E to said bill; and said original deed is hereto appended as Exhibit No. 1 hereto, and prayed to be taken and considered as a proper part of this answer. And defendant says that it is not true, as stated and pretended in said bill by said plaintiffs, that said deed is made without consideration, but the same is founded on good and legal consideration, to wit, marriage, and the same is valid and legal.

4. And defendant further says that always before and at the time of her said marriage, and ever afterwards up to the filing of this bill, she had no notice or suspicion of the pretended claim to said lands of these plaintiffs.

5. And defendant further says and answers that it is not true that said conveyance, Exhibit No. 1, was made or intended to defraud or wrong or injure the plaintiffs, or any of them, in any manner
55 whatever, but the same was executed and made and delivered in the utmost good faith towards all persons whatsoever.

6. And defendant further says that upon the execution of said deed of conveyance No. 1, aforesaid, to wit, on the day of the date thereof, she entered into the possession of the lands therein mentioned and described, and she so took possession thereof under said deed No. 1, and she has held constant, continuous, & uninterrupted and adverse possession of lands and all parts and portions thereof ever since, and that he, said husband, had and held constant, continuous, and uninterrupted adverse possession of said lands from the day of the purchase thereof by him from said John D. Ware, in his lifetime, to wit, on March 28, 1871, till the said Wm. D. Hardin conveyed the same to her, as aforesaid, and put her in possession of the same, as above said, and that her said adverse possession, as above said, joined to the adverse possession of her said husband, as above said, has continued for ten years and more, up to the filing of the plaintiffs' said bill, to wit, from March 28, 1871, to October 26, 1881.

56 7. And this defendant, by way of plea, further answers and says, that said John D. Ware, deceased, and said plaintiffs, nor any of them, have not had or been in possession of said lands, nor any portion thereof, named and described in plaintiffs' said bill, within seven years next before the commencement of this suit.

8. And defendant further says, by way of plea, that said John D. Ware and said plaintiffs, nor any of them, have not had or been in possession of said lands, nor any portion thereof, named and described in plaintiffs' said bill within ten years next before the commencement of this suit, and she insists upon said delay as a bar to this suit in equity.

9. And defendant, further answering, says that she demurs to said bill, and sets down the following causes of demurrer, that is to say:

1. Because said bill is without equity.

2. Because said bill does not allege and show that said John D. Ware, or said plaintiffs, offered to return the consideration paid by said Wm. D. Hardin to him before the filing of this bill, or to this defendant.

57 3. That plaintiffs seek to quiet title, and do not show they are in possession.

4. That the bill shows on its face that the claim is barred by the statute of limitation, and it does not allege any exception which brings the parties within the exception.

LIDA C. HARDIN.

THOS. M. PETERS & O. P. LYLES, S. P. SWEPSTON,
Sols. for Lida C Hardin.

STATE OF TENNESSEE, *County of Shelby:*

I, Lida C. Hardin, respondent in the above and foregoing answer, do solemnly swear that the statements and charges stated in said answer as of my own knowledge are true, and those statements, charges, &c., made upon information derived from others I believe to be true. Sworn to and subscribed before me, a commissioner for the State of Arkansas, residing in Memphis, Tennessee, this the — day of December, 1881.

As witness my hand and official seal, at my office, at Memphis.

Commissioner for Arkansas.

58 *Exhibit to W. D. Hardin's Answer.*

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered, that at a probate court of said county, begun and holden at the clerk's office (there being no court-house in said county), in the town of Marion, in said county, on the 15th day of January, 1872, the same being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding the Honorable Thomas L. Dougherty, judge of said court, and was also in due attendance W. D. Hardin, sheriff of said county, and John Swepston, clerk of said court, and, when the court was declared duly opened according to law, the following proceedings were had, to wit:

Approval of Bond. Jan. 15, 1872.

Estate of J. D. WARE, Deceased. L. B. HARDIN, Administrator.

On this day the bond of said administrator of said estate, taken in the sum of eight thousand dollars, with W. R. Price, Charles Ward and A. M. Clement as his sureties, is examined and approved
59 by the court, and the clerk ordered to issue letters of administration to said L. B. Hardin on said estate.

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, circuit and *ex-officio* probate clerk, do certify that the above and foregoing is a true and correct copy of the opening order, January term, 1872, and the order approving bond of L. B. Hardin, adm'r J. D. Ware, deceased, as appears on page 407, Probate Record, Book D, in my office, at Marion, Arkansas.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 16th day of Dec., 1881.

[L. S.] A. H. FERGUSON, *Clerk*,
By E. R. HIGGS, *D. C.*

60 *Order for Deed. Jan.* 15, 1872.

In the Matter of the Estate of J. D. WARE, Dec'd.

And now on this day comes L. B. Hardin, duly qualified and appointed administrator of the estate of J. D. Ware, dec'd, whose bond

with sufficient security has been approved by the court at the present term thereof, and now on file in the office of the clerk of this court, and by petition shows to the court that on the 28th day of March, 1871, said J. D. Ware executed to one W. D. Hardin his bond in the sum of twenty thousand dollars, to be void on the following conditions, to wit:

That on the 1st day of January, 1872, upon the payment to the said J. D. Ware, or his legal representatives, by said W. D. Hardin the sum of ten thousand dollars, in the scrip or treasury warrants of Crittenden county, Arkansas, to the said J. D. Ware, or his legal representatives, would execute to the said W. D. Hardin a good and sufficient deed, an undivided half interest in and to the following described lands, to wit:

The southwest ¼ of Sec. 22, the northwest ¼ of Sec. 27, the north fl. ¼ of Sec. 28, the east ½ of the west ½ of Sec. 15, the east ½ of
61 the southwest ¼ of Sec. 10, one undivided interest containing $155\frac{22}{100}$ acres of a Spanish grant or confirmation in the name of Augustus Gonzee, No. 2931, lying on both sides of the military — and on both sides of the Fifteen-Mile bayou and mostly in Sec. 28, and the north ¼ of Sec. 29, said lands all lying in township 7 north, of range 8 east, of the 5th principal merid., being situate in the county of Crittenden and State of Arkansas, together with all estate, right, title, or interest accruing to said J. D. Ware, to the said lands, to or through the said J. D. Ware, all which is referred to in said title-bond, duly executed and recorded in Book "M" of the records of Crittenden county and said State on pages 598, 599, and 600, lands aforesaid being more specifically described and set out in said bond referred to. And the said L. B. Hardin further showing to the court that on the said 1st day of January 1872, the said W. D. Hardin paid to him, the said administrator, the said sum of ten
62 thousand dollars, in the scrip or treasury warrants of Crittenden county, pursuant to the conditions of said bond, and the same the last due and unpaid upon said lands, the court being fully advised in the premises, it is ordered, adjudged and decreed that L. B. Hardin, administrator of J. D. Ware, pursuant to the conditions of said title-bond, forthwith execute to said W. D. Hardin a good and sufficient deed for the said lands described herein and more fully set forth, conveying with general warranties and covenants to said W. D. Hardin the undivded half interest [in] the lands aforesaid, and all interests and estates hereafter accruing to the said J. D. Ware in said lands, or through J. D. Ware to the same.

January 15th, 1872.

THOS. L. DOUGHERTY, *Judge.*

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, circuit and *ex-officio* probate clerk in and for the county and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the order made by Thos. L. Dougherty, judge, written on letter paper and pasted in Pro-

63 bate Record, Book D, between pages 408 and 409, in my office at Marion.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 16th day of December, 1881.

[L. S.] A. H. FERGUSON, *Clerk*,
By E. R. HIGGS, *D. C.*

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered that at a probate court of said county, begun and holden at the clerk's office (there being no court-house in said county), in the town of Marion, in said county, on the 15th day of January, 1872, the same being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding the Honorable Thomas L. Dougherty, judge of said court, and was also in due attendance W. D. Hardin, sheriff of said county, and John Swepston, clerk of said court, and, when the court was declared duly opened according to law, the following proceedings were had, to wit:

Tuesday, February 20th, 1872, being one of the days of said term, among others, the following proceedings were had, to wit:

64 *Motion to Remove Adm'r Refused. Feb.* 20, 1872.

Estate of JOHN D. WARE, Deceased. L. B. HARDIN, Administrator.

On this day come John I. Ware, Maria Ware, James Mores and wife, Joe Lett and wife, Emma Ware, William Ware, and Maggie Ware, distributees and legatees of the estate of J. D. Ware, deceased, by attorney, and moves the court here to revoke and set aside the letters of administration granted to this court to L. B. Hardin upon the estate of the J. D. Ware, deceased, and, in the event that this court should not see proper to revoke and set aside said letters of administration, said distributees and legatees hereby pray that this court require said administrator to give additional security as such; and the court, having heard said petition, the evidence of witnesses, and the argument of counsel, and being fully advised in the premises, doth overrule the motion to revoke and set aside said letters, and doth order that said administrator give new bond, as such administrator, in the sum of fourteen thousand and five hundred dollars by the 27th day of February, 1872; thereupon petitioners, by att'y, move for appeal to the circuit court, which is granted.

65 Monday, March 4th, 1872, being one of the days of said term, among others, the following proceedings were had, to wit:

New Bond. Approved March 4, 1872.

Estate of J. D. WARE, Dec'd. L. B. HARDIN, Adm'r.

Now, on this day the new bond of said administrator, heretofore filed in vacation, taken in the sum of fourteen thousand and

five hundred dollars, as per previous order of this court, with W. R. Price, R. C. Wallace, and E. B. Lewis, as securities, is examined and approved by the court.

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, circuit and *ex-officio* probate clerk within and for the county and State aforesaid, do certify that the above and foregoing is a true and correct copy of the opening order at the January term, 1872, of the probate court, and orders as appears upon pages 412 & 413 of Probate Record, Book D, at said term in estate of J. D. Ware, dec'd.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 16th day of Dec., A. D. 1881.

[L. S.] A. H. FERGUSON, *Clerk*,
By E. R. HIGGS, *D. C.*

66 STATE OF ARKANSAS, *County of Crittenden:*

Be it remember that at a probate court, begun and held at the clerk's office on Monday, the 15th day of July, 1872, it being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding the Honorable M. H. Wing, judge of said court, and was also in due attendance W. L. Hardin, sheriff, (by his deputy, E. B. Lewis,) and John Swepston, clerk, (by his deputy, I. P. Swepston,) and, when the court was declared duly opened according to law, the following proceedings were had, to wit:

And August the 30th, 1872, being one of the days of said term, among others, the following proceedings were had, to wit:

Order to Sell Scrip. Aug. 30th, 1872.

And now on this day comes L. B. Hardin, adm'r of the estate of John D. Ware, deceased, and files his petition asking for an order of this court directing him to sell for the best price possible about ten thousand dollars of Critttenden county scrip belonging to said estate and in his possession, and for the purpose of liquidat-
67 ing the indebtedness of said estate and the court, being advised in the premises, doth grant the prayer of the petition, and said adm'r is ordered to sell said scrip at either public or private sale as he may consider to be for the best interest of the estate.

Allowance. Aug. 30, 1883.

Estate of JOHN D. WARE, Dec'd. L. B. HARDIN, Adm'r.

On this day the claim of W. D. Hardin against said estate for two thousand three hundred and thirty-three dollars & sixty-five cents is allowed and classed in class No. Five (5).

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit and *ex-officio* clerk of the probate — within and for the county and State aforesaid, do hereby

certify that the above and foregoing is a true copy of the opening order at the July term, 1872, of the probate court, and also true copies of the orders made at said term in estate of J. D. Ware, dec., as appears on page 438, of Probate Record, Book D, in my office.

68 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Marion, on this the 16th day of Dec., A. D. 1881.

[L. S.]

A. H. FERGUSON, *Clerk*,
By E. R. HIGGS, *D. C.*

MONDAY MORNING, *January 20th*, 1873.

Court met pursuant to adjournment, present and presiding the Hon. M. H. Wing, judge, and was also present W. D. Hardin, sheriff of said county, by his deputy, E. B. Lewis, and John Swepston, clerk of said court, by his deputy, R. F. Crittenden, when the following proceedings were had, to wit:

And March 21st, being one of the days of said term, among others, the following proceedings were had, to wit:

Account Current. Jan. 20, 1873.

Estate of JOHN D. WARE, Dec'd. L. B. HARDIN, Adm'r.

And on this day comes L. B. Hardin, administrator of the estate of J. D. Ware, deceased, and files his 1st annual settlement or account current of said estate and vouchers therewith, and the same being examined, found correct by the court, it is approved

69 and confirmed and ordered to lie over until the next term of this court for exceptions, if any, to be filed.

Adm'r Discharged. Jan. 20, 1873.

Estate of J. D. WARE, Dec'd. L. B. HARDIN, Adm'r.

And now, on this day comes L. B. Hardin and files his resignation of the administration of said estate, and the said administrator having fully settled all matters of account connected with the said administration, it is ordered that the same be, and is hereby, granted, and he be discharged from his bond given as such administrator.

STATE OF KANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit and *ex-officio* clerk of the probate court within and for the county and State aforesaid, do certify that the above and foregoing is a true and perfect copy of the orders made by the probate court of said county at its January term thereof 1873, as appears on pages 462 and 463 of Probate Record, Book D, in my office, at Marion, Crittenden county, Arkansas.

In testimony whereof, I have hereunto set my hand and

70 affixed the seal of said court, at my office, in Marion, this the 16th day of Dec., 1881.

[L. S.]

A. H. FERGUSON,
Probate Clerk.
By E. R. HIGGS, *D. C.*

MONDAY, *January 20th*, 1873.

Court met pursuant to adjournment.

Present and presiding, the Hon. W. H. Wing, judge; and was also present W. D. Hardin, sheriff of said county, by his deputy, E. B. Lewis, and John Swepston, clerk of said court, by his deputy, R. F. Crittenden, when the following proceedings were had, to wit:

Bryant appointed Jan. 20, 1873.

Estate of J. D. WARE, Dec'd.

And on this day, upon the application in writing of W. D. Hardin, a creditor of said estate, it is ordered that C. W. Bryant be, and is hereby, appointed administrator *de bonis non* of the estate of J. D. Ware, dec'd, and that he execute bond to be approved by the clerk of this court, in the sum of ten thousand dollars.

STATE OF ARKANSAS, *County of Crittenden.*

I, A. H. Ferguson, circuit and *ex-officio* probate clerk in
71 and for the county and State aforesaid, do certify that the above and foregoing is a true copy of the order in est. of J. D. Ware, de'd, as appears on page 463 of probate record, Book D, in my office at Marion, Arkansas.

In testimony whereof, I have hereunto set my hand affixed the seal of said court, this 17th day Dec., 1881.

[L. S.] A. H. FERGUSON, *Probate Clerk*,
By ERNEST R. HIGGS, *D. C.*

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered that at a circuit court begun and held at the Methodist church, there being no court-house, in the town of Marion, county of Crittenden, and State of Arkansas, on Monday, the 23d day of February, 1874, it being the 4th Monday in said month, and the time fixed by law for holding said court. There was in due attendance W. D. Hardin, clerk of said court, and E. B. Lewis, sheriff of said county, when said sheriff proceeded to open court by proclamation, the Hon. John W. Fox, judge of said court, not being present, E. B. Lewis, sheriff of said county, proceeded to ad-
72 journ court until to-morrow morning, 9 o'clock a. m.

TUESDAY MORNING, *February*, 24, 2874—9 o'clock a. m.

Court met pursuant to adjournment. Present and presiding: The Hon. John W. Fox, judge of said court. There was also in attendance W. D. Hardin, clerk of said court, by his sworn deputies, Reese Davis and R. L. Hardin; also E. B. Lewis, sheriff of said county, by his true and lawful deputies, R. P. Key, and W. H. Hayward, when the following proceedings were had.

Monday, March 15th, being one of the days of said term, among others, the following proceedings were had, to wit:

Reference, M'ch 15, 1874.

Estate of J. D. WARE, deceased.

On this day the final settlement of accounts of L. B. Hardin, hitherto administrator of said estate, is by the court referred to S. P. Swepston, Esq., as special master in this cause, to examine the same and report thereon at this term of this court.

73 STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit court, and *ex-officio* probate clerk within the county and State aforesaid, do hereby certify that the above and foregoing is a true and perfect copy of the order made at the February term, 1874, of the probate court of said county, in estate of J. D. Ware, deceased, as appears on page 517 of Probate Record Book D, in my office, at Marion, Crittenden county, Arkansas.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, on this 17th day of Dec. A. D. 1881.

[SEAL.] A. H. FERGUSON,
Clerk Probate Court.
By ERNEST R. HIGGS, *D. C.*

THE STATE OF ARKANSAS, *County of Crittenden, Town of Marion:*

APRIL 24, 1876.

74 Be it remembered that the day in the caption hereof, having been appointed by law for the regular session of the circuit court of said county, and now at this day being present Daniel W. Lewis, clerk, and E. B. Lewis, sheriff, the judge authored by law to hold the said court not being present to open and hold the same, as by law directed, the sheriff aforesaid made proclamation that the said court was adjourned until ten o'clock on to-morrow, the 25th day of April, 1876.

DANIEL W. LEWIS, *Clerk.*

APRIL 25TH, 1876.

And now at this day the judge appointed by law to hold the session of said court not being present, the members of the bar practicing in said court, and in due attendance thereof, met at the court-house of said county at ten o'clock a. m. this day, and by ballot held and taken by the clerk of said court, in presence of said sheriff of said county, did then elect R. F. Crittenden, Esq., one of their members, and a resident of said State of Arkansas, to preside in said court and hold the present session thereof, and there-
75 upon the said R. F. Crittenden took the oath prescribed in the constitution in the State of Arkansas to be taken by the judge of said State, before the clerk of said court, and entered upon the duties of his office, and ordered the said court to be regularly open for the business of the term, with Daniel W. Lewis, clerk of said court, and Ed. B. Lewis, sheriff of said county; and when the court was so declared to be opened, as aforesaid, the following proceedings was had, to wit:

Tuesday, May 23d, 1876, being one of the days of said term, among others, the following proceeding were had, to wit:

J. D. WARE *et al.*
vs. } 379.
L. B. HARDIN, Adm'r.

On this day, in this cause, continuance set aside and bill dismissed.

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit court within and for the county and State aforesaid, do certify that the above and
76 foregoing is a true and perfect copy of the opening order of the Crittenden circuit court, in chancery, at its April term, 1876, as appears on page 257, and also the order dismissing bill, as appears on page 269 of chancery court record book "E," in my office, at Marion, Crittenden county, Arkansas.

In testimony whereof, I have hereunto set my hand [and] affixed the seal of said court, this 17th day of December, A. D. 1881.

A. H. FERGUSON,
Circuit Clerk.
By E. R. HIGGS, *D. C.*

Petition of Adm'r. No Date.

STATE OF ARKANSAS, *County of Crittenden:*

In Probate Court.

To the Hon. Thomas L. Daugherty:

L. B. Hardin would most respectfully represent unto your honor that he is now the administrator estate of J. D. Ware, deceased; that on the 28th day of March, 1871, said J. D. Ware, executed to one W. D. Hardin his title bond, in the sum of twenty thousand dollars, for the conveyance, on the 1st day of January, 1872, to the said W. D.
77 Hardin a half interest of certain land in said county, and all interest after accruing to said J. D. Ware in said lands, with full and general warranties and covenants, said land being specifical- described in said bond, which is filed herewith and made part of this petition. On the first day of January, 1872, said W. D. Hardin paid to the petitioner, said L. B. Hardin, the sum of ten thousand dollars in the scrip or treasury warrants of Crittenden county, the only amount remaining due and unpaid upon said lands so described by the terms and conditions of said bond. Wherefore your petitioner prays an order from this honorable court for the convey. ance of said lands according to the conditions of the bond herewith filed. Your petitioner will ever pray, & etc.

L. B. HARDIN,
Administrator of the Estate of J. D. Ware, dec'd.

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, circuit and ex-officio probate clerk
78 within and for the county and State aforesaid, do certify that the above and foregoing is a true and complete copy of original petition of L. B. Hardin, adm'r of est. of J. D. Ware, dec'd, now on file in my office and among the papers of said estate at Marion, Crittenden county, Arkansas.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this the 17th day of Dec., 1881.

[L. S.] A. H. FERGUSON,
Probate Clerk,
By E. R. HIGGS, *D. C.*

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered, that at a circuit court begun and held at the Methodist church, there being no court-house in the town of Marion, county of Crittenden, and State of Arkansas, on Monday, the 23d the day of February, 1874, it being the 4th Monday in said month, and time fixed by law for holding said court, there was in due attendance
W. D. Hardin, clerk of said court, and E. B. Lewis, sheriff of
79 said county, when said sheriff proceeded to open court by proclamation, the Hon John W. Fox, judge of said court not being present. E. B. Lewis, sheriff of said county, proceed- to adjourn court until to-morrow morning, 9 o'clock a. m.

TUESDAY MORNING, *February 24th*, 1874—9 o'clock a. m.

Court met, persuant to adjournment.

Present and presiding: The Hon. John W. Fox, judge of said court. There was also in due attendance W. D. Hardin, clerk of said court, by his sworn deputies, Rees Davis and R. L. Hardin; also, E. B. Lewis, sheriff of said county, by his true and lawful deputies, R. P. Key and W. H. Hayward, when the following proceedings were had to—:

No. 1.—*Settlement Approved Feb.* 17, 1874.

And March the 17th being one of the days of said term, among others, the following proceedings were had, to wit:

Est. of J. D. WARE, deceased:

And on this day the report of S. P. Swepston, special master, is filed, and the same approved by the court; and the said final settlement of L. B. Hardin, adm'r, approved and confirmed, and his securities discharged from their bond.

80 STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit and *ex-officio* probate clerk within and for the county and State aforesaid, do hereby certify that the above and foregoing is a true and complete copy of the opening order of the probate court of said county at the February

term, 1874, thereof, as appears upon page 504, and the order made at said term in the estate of J. D. Ware, deceased, confirming the final settlement of L. B. Hardin, adm'r, and discharging the said adm'r and the securities on his bond as adm'r of said estate, as appears on page 522 of same Record Book "D," in my office at Marion, Arkansas.

In —— whereof, I have hereunto set my hand and affixed the seal of said court, at office at Marion, on this the 19th day of December, A. D. 1881.

[L. S.] A. H. FERGUSON, *Probate Clerk*,
By E. R. HIGGS, *Dep'ty Clerk*.

And on January 11, 1882, as follows:

81 BLAND P. BOYD *et al.*
vs.
WM. D. HARDIN *et al.*

Now, on this day came the plaintiffs, by U. M. & G. B. Rose, their solicitors, and it being made to appear that the defendants, John Murray and James H. Murray, were duly served with subpœna herein on the third day of November, 1881, and that they have wholly failed to appear, plead to answer, or demur to the bill of the plaintiffs on file in this cause, it is now ordered that the said bill be taken as true and confessed against them. And the plaintiffs, by leave of the court, file here their replication to the answers of the defendants Wm. D. Hardin and Lida C. Hardin, herein; and it is now ordered that this cause be set down for final hearing, with leave to all parties to take proof during the time allowed by the practice of this court.

Which replication is as follows:

82 In the United States Circuit Court for the Eastern District of Arkansas.

BLAND P. BOYD *et al.*, Plaintiffs,
v.
WILLIAM D. HARDIN *et al.*, Defendants.

Come the said plaintiffs herein, and for replication to the answers of William D. Hardin and Lida C. Hardin, on file herein, they say that the said answers are neither sufficient in law nor true in fact; but that their said bill is both sufficient in law and true in fact, as they will maintain and prove at such time and in such manner as the court may direct.

U. M. AND G. B. ROSE, *Sol's.*

83 United States of America, eastern district of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the —— day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room

in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on December 1, 1883 :

BLAND P. BOYD *et al. v.* WM. D. HARDIN *et al.*

Come the defendants, by Peters and Hodges, and Syles and Harris, Esqs., their solicitors, and file herein their motion to dismiss the bill in this cause.

Which motion to dismiss is as follows :

In the United States Circuit Court for the Eastern District of Arkansas.

BLAND P. BOYD *et al. v.* WILLIAM D. HARDIN *et al.*

84 This day come the defendants by their attorney-, Peters and Hodges, and Lyles & Harris, and move the court here to dismiss this action for want of jurisdiction, because there is a full, complete, and unembarrassed remedy at law.

PETERS & HODGES, LYLES AND HARRIS,
Atty's for Def'ts.

U. M. & G. B. ROSE, *Att'y- for Pl'ffs.*

On the final hearing, the following depositions were read in evidence for complainant :

The depositions of witnesses taken at the law office of House and Sanders, in the town of Searcy, White county, Ark., on this the 22d day of November, 1882, before A. P. Sanders, a notary public within and for said county.

W. E. BARTON, a witness for the plaintiffs, being by me first duly sworn, deposes as follows :

1st interrogatory. State your name, age, place of residence, and occupation.

85 Answer. My name is W. E. Barton ; am 34 years of age ; place of residence, Searcy, Arkansas ; and by occupation, a commercial traveler.

2 Int. Are you acquainted with the parties to this suit ; if so, how long have you known them ?

Answer. I am acquainted with the plaintiff, J. L. Lett, and wife, Mary N., and with the defendant, W. D. Hardin, and his wife, Lida C. ; am not acquainted with the other parties ; have known J. L. Lett personally about seven or eight years ; have known the defendant, W. D. Hardin, for about twenty years.

3d Int. Are you acquainted with the subject-matter of this suit ?

Answer. I am acquainted with the plantation known as the "Ware place," situate about 2½ miles west of Marion, on the military road, in the county of Crittenden, this State, which, as I understand, is in controversy in this suit ; I don't know who owns or occupies the place now, but the defendants, W. D. Hardin and

86 wife, lived on it and claim to own it the last time I knew anything about it.

4th Int. Did you ever hear defendant, W. D. Hardin, make any statement or declaration as to when, how, and from whom he purchased said plantation, and how much he was to pay for it? If so, give the time, place, and the words of the declaration or statement so made by defendant Hardin, as fully and as accurately as you can.

Answer. During the winter of the year 1871 and 1872, or in the spring of 1872, I don't remember which, I met the defendant, W. D. Hardin, at my father's house, on Shelby street, in the city of Memphis; he visited my father's house frequently; I think we roomed together that night; in the course of a conversation had between us I asked him (defendant Hardin) "How it was that he managed to get hold of or purchase the plantation in controversy so cheaply?" He told me how he purchased it and how he managed to pay for it
87 in county scrip of Crittenden county—his statements and declarations concerning that transaction were substantially as follows:

That, being desirous of purchasing said plantation from the old man, John D. Ware, and wanting to pay for it in county scrip, that Ware at the time was old and feeble and could not get about much, he (Hardin) procured one E. B. Lewis (who was afterwards sheriff of Crittenden county) and his brother, L. B. Hardin, to come at different times, first one and then the other, and propose to him (W. D. Hardin) in the presence and hearing of old man John D. Ware, to sell county scrip of Crittenden county; that he would then and there, in thore presence of said Ware, purchase, or pretend to purchase, the scrip of said Lewis or his brother, as the case might be, and pay therefor in cash, which was counted out, the sum of seventy-five cents on the dollar; that he arranged and procured said Lewis and his brother, first one and then the other, to come on different days or times; that he,
88 in the presence of said Ware, purchased, or pretended to purchase, their (his own) scrip as often as they came and would count them out the money, paying therefor 75c. to 80c. on the dollar. That on one occasion he, in this way, purchased of one of them one lot of about one thousand dollars; that the same scrip was made use of in all these pretended offerings and purchases. That this transaction in scrip between him and his brother and said Lewis was a mere sham and a pretense, and done only for the purpose of deceiving and misleading the said John D. Ware, inducing him to believe that county scrip was worth 75c. or 80c. on the dollar, when it was worth only about 20 to 25c. That by this means he induced Ware to believe that county scrip was really worth about 75c. to 80c. on the dollar, and he finally succeeded in buying the plantation and stock of Ware, paying therefor with county scrip at 75 or 80 cents on the dollar.

Int. Did said defendant Hardin tell you during that con-
89 versation, or at any other time, the amount of scrip that he paid Ware for said plantation and stock?

Answer. Yes; he stated to me the amount, but I don't remember as to how much it was, though it was several thousand dollars; between thirty and fifty thousand.

Int. Where did you reside about the year 1871; what business were you engaged in; were you familiar with the affairs of Crittenden county about that time; do you know what the scrip of said county was worth about the year- 1871 & 1872?

Answer. I was merchandising at the city of Memphis—wholesale dealer; did business on Front Row at that time, but was tolerably familiar with the affairs of Crittenden county; sold goods to merchants and people doing business and living in that county; was over in Crittenden county and about the county seat frequently; the market value of the scrip of that county at that time was from to 20 to 25 cents on the dollar; I frequently sold goods to parties, and held scrip as collateral security for payment, rating it at
90 from 20 to 25c. on the dollar, and sometimes purchased it at fifteen cents on the dollar.

Int. Were you acquainted with L. B. Hardin, brother of defendant, W. D. Hardin? What was the nature of W. D. Hardin's influence over his said brother; was or was not L. B. under the influence of or subject to be controlled by said W. D.?

Answer. I was very well acquainted with L. B. Hardin; the influence that W. D. Hardin exerted over him was so great and of such a nature that he was simply a tool in his hands; I don't mean to say that said L. B. Hardin was dishonest or corrupt, if left to follow out his own inclination; I don't believe he was; but he was so completely under the control of his brother that he would do or attempt to do anything that his brother would dictate in order to carry out and further his plans and schemes.

Question. Do you know where W. D. Hardin and his brother L. B. and old man John D. Ware lived at the time of the scrip
91 transaction referred to in the declaration of defendant, W. D. Hardin, detailed above?

Answer. W. D. Hardin at that time lived on the place in controversy, as also did his brother, L. B. W. D. Hardin had the place rented from Ware, who was occupying only one room in the house. Hardin and his brother occupied the other part of the house. Old man Ware at that time was old and feeble, and was confined to his room for the most of the time.

And further deponent sayeth not.

W. E. BARTON.

Attest: A. P. SANDERS,
Notary Public.

STATE OF TENNESSEE, *County of Shelby:*

Statement of H. B. Howell, a member of the firm of Farrington and Howell, written out by himself under the hereunto annexed agreement, and to be by him sworn to before being used as testimony on behalf of the plaintiffs in the case of B. P. Boyd, as adm'r, *et al. vs.* L. C. Hardin *et als.* pending in the U. S. c't c't for
92 the eastern district of Arkansas, at Little Rock.

1st. I knew John D. Ware in 1869, and many years before 1869, and one or two years after 1869.

2d. He is now dead, but I do not remember the time of his death, but think it was 1871.

3rd. The house of Farrington and Howell did business for him [in] 1869; also before and after 1869.

4th. John D. Ware's financial standing with the house of Farrington & Howell in 1869 was good. The house would have furnished Ware with supplies or money to make his crop without any hesitancy.

5th. I was a member of the house of Farrington and Howell in 1869.

6th. The house of Farrington and Howell received from John D. Ware, during the cotton season of 1869, twenty-six bales cotton.

7th. I find a pencil mem'd. at top of John D. Ware's ac. on
93 the ledger of Farrington and Howell the following words and figures: "Said to contain 4,940.53 Crittenden scrip, and the p'k'ge of Crittenden scrip was de[livered] to Bland P. Boyd, adm'r of John D. Ware, dec'd."

H. B. HOWELL,
Of the Firm of Farrington & Howell.

Sworn to and subscribed before me, this 29 day of May, 1883.
[L. S.] J. M. COLEMAN,
Commissioner for the State of Arkansas.

Deposition of J. F. Smith and others, to be read as evidence on behalf of complainants in above-entitled cause, in the above-entitled court, taked by consent on this day, at the office of R. F. Crittenden, in the town of Marion.

J. F. SMITH, first witness for complainant, being sworn by the said notary public aforesaid, in manner and form as prescribed by law, on his oath says:

My name is J. F. Smith; I am 47 years old; I reside in Marion, Crittenden Co., Arks.; and am by occupation a merchant and
94 a farmer, and have lately seen the biggest overflow of my life; I have lived and resided in Crittenden county, Arkansas, since the fall of 1876, and I know and have known W. D. Hardin since Sept., 1864, and I have known him ever since he has lived in this county, about fifteen years; I also know Lydia C. Hardin, wife of W. D. Hardin, for a few years last past; I knew John D. Ware in his lifetime, and knew him from 1867 up to the time he left Crittenden county, Arkansas; I also knew B. P. Boyd, his adm'r, and have known him for several years; I know the general location of the lands known in Crittenden county as the Ware Home place, now the subject of controversy in this suit; I was also one of the commissioners to divide the lands of the said Ware plantation in a proceeding in this court between Robert Picket, complainant, and W. D. Hardin and others, defendants.

Ques. Please state as well as you know and as far as you are advised, what the one-half interest in said plantation owned by J. D.

Ware in the early part of the year 1871 was worth; state all you know.

Ans. It was worth at that time about 20 or 25 dollars per
95 acre; that is my opinion, and the rental value of lands at that time was worth from 8 to 10 dollars per acre; the above is the price that lands generally rented at; I do not think the Ware lands as good as others in the neighborhood, but I consider its annual rental value at 8 dollars per acre.

Ques. Please state whether or not, from your knowledge of and association with W. D. Hardin and J. D. Ware prior and up to the earlier part of the year 1871, W. D. Hardin was not a live, shrewd, keen, calculating business man, and J. D. Ware an infirm, aged, and enfeebled man, with no business habits or capacity?

Objected to by the defendant, because it is leading.

Ans. I looked upon Mr. Hardin as an exceeding active, cunning man, and always on the lookout for a dollar. I don't mean to say that Mr. Hardin was systematical or methodical in his business, but if there was any short roads he generally took them. Mr. Ware was in the decline of life and aged, but a good business man at that time. I never had a business transaction with Mr. Ware in my life, and my associations with him were not of a very inti-
96 mate character, but I frequently had conversations with him, which gave me an idea of his business capacity and purposes.

Ques. What was Crittenden county scrip worth on the dollar in March, 1871, or about that time?

Ans. Crittenden county scrip was worth at that time from 15 to 25 cents. I bought some about that time from W. D. Hardin at 15 cents on the dollar; the scrip I bought from Mr. Hardin I know was a short time prior to an order made by Thos. L. Dougherty, judge of the probate court of Crittenden county, to L. B. Hardin, (brother of W. D. Hardin,) the then adm'r of J. D. Ware, dec'd, in Arkansas, to sell the Crittenden county scrip ($10,000) represented to have been paid to him as such adm'r by his said brother, W. D., in payment of balance of the purchase-money for the said Ware plantation, and I remarked to Dr. Grigsby, and perhaps others at the time, that he, W. D. Hardin, was certainly a shrewd man, as his transaction was evidently for the purpose of establishing the price of Crittenden county scrip, but I could not see through the said transaction until the subsequent order so made by the said Dough-
erty, judge.

97 Ques. Did you know L. B. Hardin, brother of W. D. Hardin, and was he not at one time, shortly after the death of J. D. Ware, administrator of his estate in Arkansas, and to what extent was he under the control and influence of W. D. Hardin in all of his matters and business relationship in life?

Objected to by defendant, for want of foundation, and the same is leading.

Ans. Yes; I did know L. B. Hardin, and I know that he is re-

puted to be dead, and doubtless is; I know that he was the administrator of Ware shortly after his (Ware's) death, and am familiar with the administration contest between the said L. B. Hardin and Dr. A. S. Grigsby; I always looked upon W. D. Hardin as the ruling spirit, and that L. B. Hardin was the same as a piece of putty in his (W. D. Hardin's) hands, and absolutely under his control.

Ques. Did you know Thos. L. Dougherty in his lifetime, and was he at any time a commissioned an acting judge of the probate court of Crittendon county, Arkansas; if yea, at what time; what was his relationship and connection with W. D. Hardin, if any?

98 Ans. I knew Thos. L. Dougherty in his lifetime—he is dead. I knew at one time he was county and probate judge Crittenden county, Arkansas; was elected in 1868, and held his office about 4 years; and his relationship with W. D. Hardin was of a very intimate character.

Ques. Did you know one C. W. Bryant; what was his avocation and what was his relationship, if any, with W. D. Hardin and L. B. Hardin?

Objected to, on account of irrelevancy, by defendant.

Ans. I did know C. W. Bryant, he was a lawyer by profession, his relationship with W. D. and L. B. Hardin up to a certain period was of the most intimate character, and he was their lawyer.

Ques. Please state whether or not, after the said C. W. Bryant left this country for California, on the 15th day of February, 1875, you ever received a letter from him in which he detailed or gave you a statement how the estate of the said J. D. Ware was overreached in the said land transaction by the said W. D. Hardin, and the orders of said Dougherty, probate judge, or John W. Fox, circuit

99 judge, with probate jurisdiction and the administration and discharge of the said L. B. Hardin. If yea, and you have such letter or letters, please make the same exhibits to this, your deposition, and write your name thereon for identification.

Objected to by defendant, because Bryant's letters cannot bind Hardin, and the question is irrelevant and without foundation.

Ans. I did receive a letter from C. W. Bryant, in which he detailed to me how the estate of Ware was overreached in that transaction, and how the order of J. W. Fox, circuit judge with probate jurisdiction, came upon the record in the matter of said estate. I knew at the time of these transactions that the said Bryant was attorney for both W. D. Hardin and L. B. Hardin, adm'r, and that he professed in his said letter to give me the facts in the case as an attorney and familiar with the transactions, I cannot exhibit that letter with my depositions now, because I do not know where the same is, but I will make diligent search therefor, and if found will exhibit the same as requested.

The above answer objected to by d'f'ts' counsel, because

100 the letter is not produced.

Further the deponent sayeth not:

Cross-examination:

Interrogatory. Do you know from your own knowledge that Wm. D. Hardin did actually influence L. B. Hardin in the matters of the Ware estate, or are you simply giving your opinion?

Ans. I do not know from my own knowledge, but simply what I know of the character of the two men.

Int. 2. Is it not a fact that they were exceedingly kind to each other as brothers?

Ans. As far as I know.

Int. 3. Is it not a fact that Thos. L. Dougherty was a friendly disposed communicated man, and was very intimate with a great many persons?

Ans. I never noticed anything peculiar in his character in that direction.

Int. 4. Do you know of your own knowledge that at the time Bryant obtained the order for the sale of the scrip, that he, Bry-
101 ant, was W. D. Hardin's attorney, or are you simply giving your opinion in that matter?

Ans. I give it as my opinion that he was Bryant, represented himself to be, and I knew that Bryant attended to his law business at the time.

Int. Is it not a fact that before Bryant left here that he fell out with W. D. Hardin?

Ans. Frequently Bryant had private conversations with me, in which he told me he did not like the ways of W. D. Hardin.

Int. Is it not a fact that at the time [he] wrote the letter to you he was not Hardin's attorney?

Ans. Yes, sir; it was a fact that he was not Hardin's att'y at the time.

Int. Was there a time when W. D. Hardin was clerk of this county and the custodian of the record; if he was such clerk, from what time to what time, and if he ever was in the office personally?

Ans. Yes; he was clerk of this county and custodian of the
102 records the year 1873 and part of 1874; he was in the office at times, but generally had deputies.

Further deponent sayeth not.

J. F. SMITH.

A. H. FERGUSON, second witness for complainant, being sworn as aforesaid, on his oath says:

My name is A. H. Ferguson. I am 42 years old. I reside in the town of Marion, and I am clerk of the circuit court and all other courts of record in the county, as well as the custodian of the records of said county since Sept., 1878. I know W. D. Hardin, and have known him ever since he has been in the county, now about 16 years. I also slightly knew J. D. Ware. I know Mrs. W. D. Hardin, but no other parties to this suit.

Int. Please examine the records in your office, and say therefrom whether the defendant, W. D. Hardin, was ever clerk of the circuit

court and all other courts of record in the county of Crittenden; if yea, from what date to what date, nearly as your record shows.

Ans. By examination of county court record E, page 326,
103 I find that on the first day of January, 1873, W. D. Hardin filed his bond and took the oath of office of clerk of said county, which bond was by the court approved, and that he was and continued to act as such clerk until fourth day of Jan'y, 1875, as shown on page 423 of said same record.

Question and answer objected to, because copy of the records are not produced.

Ques. Please examine the probate records in your office and say whether at any time L. B. Hardin ever qualified as the administrator of the estate of J. D. Ware, dec'd, in Arkansas; if you say he did, say when, and exhibit herewith a copy of his appointment under the signature and seal of your office, and make the same a part of your deposition, properly marked by letters and figures for identification.

Ans. I find in Probate Record D, page 407, that the judge of said court approved his bond, and ordered the clerk of said court to issue letters of administration to the L. B. Hardin on the 15th day January, 1872.

Ques. Please examine the probate record in your office and
104 see whether you find thereon any order showing L. B. Hardin, as administrator of Ware, had filed any settlement in said estate; if yea, exhibit with your deposition a copy of said order.

Ans. I find in Probate Record D, page 462, where he files his annual settlement, and I herewith attach hereto a copy of said order.

Ques. Please examine and see whether or not on the same day the said adm'r, Hardin, tendered his resignation as such adm'r and was discharged; if so, exhibit a copy of that order with your deposition.

Ans. I find on the same day in said court that Hardin, as such adm'r, tendered his resignation, which was accepted by the court, and he was discharged, and I herewith attach a copy of said order with this my deposition.

Ques. Please examine your record and see whether or not on the same book, on the same day of the court and same page of the record, W. D. Hardin did not make an application for the appointment of C. W. Bryant as adm'r *de bonis non* of the estate of
105 said Ware; if yea, exhibit with your deposition a certified copy of said order.

Ans. W. D. Hardin did on the same day of the court, and on same page of the record, apply to have C. W. Bryant appointed adm'r *de bonis non* of the estate of J. D. Ware, dec'd, and I herewith attach a copy of said order with this my deposition.

Ques. Please examine your said record and see whether or not the same shows another and different discharge of the said Hardin, as adm'r of said estate, and state in whose handwriting said order appears; and if you say you do not know, please state if it is similar or unlike all of the writing on said two pages where the same appears.

Ans. I find another order on page 522 of the said same record; a report of S. P. Swepston, special master, is filed, and the said final settlement of said L. B. Hardin is confirmed, and the said adm'r, L. B. Hardin, and his bondsmen were discharged; I herewith exhibit a copy of the order; I do not know in whose handwriting the said order appears, and it is not the writing on the said
106 two pages, and it is better writing than the balance.

Ques. Please examine the records and papers of your office and say whether or not the papers of the administration of the estate of J. D. Ware, dec'd, by the said L. B. Hardin, or the said C. W. Bryant, are on file; if so, name all such papers as you may find them by title in your answer to this question, and give the price of Crittenden county scrip in March, 1871, as you now remember.

Ans. I have carefully examined the papers in my office, and find none of the papers of the administration of Hardin or Bryant on file. I do not know the price of Crittenden county scrip in M'ch, 1871.

Ques. Please examine your county court records and file herewith as a part of this deposition a copy of the order showing the qualification of the said Hardin, W. D., as clerk of this county, as well also showing the qualification of his successor in office.

Ans. I have examined said record, and I herewith file a copy of said orders.

107 SATURDAY MORNING, *April 15th*—8 o'c.

Further taking of depositions in this cause is proceeded with, by consent aforesaid.

A. S. GRIGSBY, 3d witness for complainants, being duly sworn as prescribed by law, on his oath says:

My name is A. S. Grigsby, Jr.; I am 46 years of age; I live in Crittenden county, Arkansas; and by occupation a physician and farmer. I know W. D. Hardin, and have known him since the year 1867. I also know Lydia C. Hardin, his wife, James and John Murray. I know B. P. Boyd, adm'r of estate of J. D. Ware, dec'd, and I know the heirs at-law of J. D. Ware, dec'd, except Mrs. Moses, and I knew J. D. Ware in his lifetime intimately and well, and once boarded at his house in Crittenden county, Arkansas, located upon the lands involved in this suit. I have lived in Crittenden county, Arkansas, since the spring of 1867 continuously, except 4 years last past in Memphis, Tenn. I have only a general knowledge of the location of the lands involved in this suit, but cannot parti-
108 cularly describe them by miles and [illegible]ls, section, township, and range. I was Mr. Ware's family physician from 1867 until the earlier part of 1871, when he left Crittenden county for his home in Brownsville, Tenn. I was very intimate with him, and frequently had conversations with him, and he talked more freely with me about his business than with any other man in Crittenden county, and at the instance of the members of his family I kept it in my memory, and frequently drew him out as to the exact status of his business, as he was very reticent with the members of his family in regard to his business. About the time of the trade be-

tween J. D. Ware and W. D. Hardin, in regard to said lands, he, Ware, was about 66 years old, not particularly feeble for a man of his age. He was a man of very negligent business habits, more so than any man I ever saw at the time. I do not think Hardin had any undue influence over him (Ware). About this time I looked upon Mr. Hardin as a sharp, shrewd man. I know that said Ware and said Hardin farmed the said plantation in partnership in
109 1869; the particular result of that farming operation I don't know. The land trade between Ware and Hardin was made in the spring of 1871. The consideration, according to my recollection, was $3,000 dollars in money and 20,000 in Crittenden county scrip—the money and 10,000 dollars of the scrip to be paid in hand, the other 10,000 dollars of scrip to be paid in 12 months after sale. When I heard of the trade and learned the conditions, I went to see Mr. Ware and advised him not to make it. I also made him a second visit and urged him not to make it. I think about that time Crittenden county scrip was worth from 30 to 35 cts. on the dollar, and lands were very high, and I did not consider it was a fair price for the lands. County scrip, in the earlier part of 1872, was selling at about 25 cts., though C. W. Bryant came into my office and offered me 100 dollars in Crittenden county scrip for fifteen dollars, which was accepted. (Transaction with Bryant objected to, on account of irrelevancy, by def't.) At the time of the trade between Ware and Hardin for the land, I think Ware's ½
110 interest in said plantation was worth $12,500, maybe something more, and would have rented for 7 or 8 dollars per acre annually. I know L. B. Hardin; he was a brother of the def't, W. D. Hardin; he was at one time adm'r of Ware's estate shortly after his (Ware's) death; and I consider L. B. Hardin, both as an individual and adm'r of this estate, absolutely under the control of W. D. Hardin. Soon after Mr. Ware died the heirs of J. D. Ware's estate made application in the probate court of Crittenden county to have me appointed adm'r of his, Ware's, estate in Arkansas, and the application was opposed successfully by W. D. Hardin and his then att'y, C. W. Bryant. Thos. L. Dougherty was judge of the probate court, and presiding at the time, and his relationship with W. D. Hardin and C. W. Byrant was exceedingly friendly, and with me exceedingly unfriendly, at the time. I knew C. W. Byrant; he was a lawyer by profession; and his relationship with Thos. L. Dougherty, W. D. Hardin, and L. B. Hardin was of an exceedingly friendly character; and he was the attorney both of W. D. Hardin and L. B. Hardin,
111 adm'r, during the administration of the said estate. I knew that A. J. Cunningham owed the estate of J. D. Ware $1,100.00. I knew that A. J. Cunningham was reputed to be solvent and perfectly responsible for that debt, or any others that he owed. W. D. Hardin and C. W. Bryant told me that Mr. Ware gave to Bryant on- half of said claim to collect it; the claim was collected, the half said to belong to the Ware's estate was used and applied towards the satisfaction of a probated claim against the Ware's estate by Mr. W. D. Hardin. I consider the rents of the one-half of the said plantation from the spring of 1871 until the spring of 1882, eleven

years, to be as follows: 1871, 1872, 1873, 1874, 1875, and 1876, 910 dollars per year; from 1877 to 1879, inclusive, 780 dollars per year; 1880, $650 dollars; 1881, $520 dollars per year, making a total aggregate for the eleven years eight thousand nine hundred and seventy (8,970) dollars. In 1869, at the time J. D. Ware and W. D. Hardin entered into their farming operations on said land, Ware's financial condition was one of comparative ease. As to Hardin,
in the spring of 1868 he had very little, but at that time
112 he was elected sheriff of this county, and I cannot say what
his fees amounted to, or what he had accumulated. I give it, as my opinion and my belief, then and now, that there was a collusion between the probate judge, Thomas L. Dougherty; L. B. Hardin, adm'r; W. D. Hardin, and C. W. Bryant, and under no circumstances could I have got the administration, and I believe this collusion was intended to prevent a fair settlement of the said estate by me, or any other administrator.

The above answer objected to, by def'ts' counsel, because it is given as the opinion of the witness.

Cross-examination:

Ques. Is it not a fact that during the militia — in 1868 & '9 Mr. Ware lost his stock, meat, fodder, and afterwards his corn was accidentally burned?

This question and answer objected to, by complainants' counsel, because the same is irrelevant and wholly without foundation therefor.

Ans. I know that Mr. Ware lost considerably by the militia, the particular description of which I do not know, and his corn was
accidentally burned in 1869.
113 Ques. Do you know that W. D. Hardin did actually influence L. B. Hardin in the administration of Ware's estate, or are you simply giving your opinion?
Ans. I am simply giving my opinion.
Int. You say you presume that Bryant was also W. D. Hardin's att'y. Do you know that, or are you simply giving it as your opinion?
Ans. It was my opinion.
Int. Do you know that Dougherty's friendship for the Hardins influenced him in the administration of said estate, or is that simply your opinion?
Ans. That is simply my opinion.
Int. Do you know what the character of the Cunningham claim was?
Ans. It was a land note given to some other party, and subsequently referred to Mr. Ware.
Int. In the division of the land between Hardin and Pickett, state, if you remember, how the land was valued.
114 Ans. My recollection is that only a relative value was placed upon it for division purposes.

Int. Did you not buy some of the same land afterwards at $4.00 per acre?

Ans. I bought 80 acres of the same land, being principally a cypress brake, adjoining my place, for which I paid $4.00 per acre. I was offered 240 acres at $3.00 per acre, but I only wanted the 80 I bought. This purchase was made from Pickett.

Int. Is it not a fact that when Ware and Hardin formed the partnership that Hardin was necessary to Ware's welfare, and that through Hardin Ware could obtain labor, without Hardin he could not?

Ans. Mr. Ware so stated it to me, and assigned that as the reason for the partnership, which I advised him against.

A. S. GRIGSBY, JR.

STATE OF ARKANSAS, *County of Crittenden:*

We agree and hereby consent that the above and foregoing depositions of J. F. Smith, A. H. Ferguson, clerk, with exhibits
115 thereto, and that of A. S. Grigsby, Jr., shall be used and read as evidence on behalf of the complainants in the cause of B. P. Boyd, administrator of J. D. Ware, dec'd, *et als.*, against W. D. Hardin *et als.*, pending in the United States circuit court at Little Rock, Arkansas, and we waive all formalities in taking of the same, and all objections thereto of every character and descriptions, save relevancy and competency. The depositions so taken may be sealed up and sent to the court by David Ferguson, who took them.

LYLES AND HARRIS, *For Defendants.*
U. M. & G. B. ROSE & CRITTENDEN,
For Complainants.

116 THURSDAY MORNING, *January 28th*, '79.

Court met pursuant to adjournment. Present and presiding: The Hon. W. H. Wing, judge of said court; F. H. Pride and W. R. Price, associate justices of court. In due attendance was E. B. Lewis, sheriff of this county, and W. D. Hardin, clerk of this court, when the following proceedings were had, to wit:

And on the same day the following order was entered:

EXHIBIT A.—A. H. FERGUSON, *Cl'k.*

And on this day comes W. D. Hardin, county clerk for this county, elected on the 5th day of November, 1872, to said office, to commence on the 1st day of January, 1873, and takes the oath of office as prescribed by the constitution and laws of this State in open court, and files his bond to the State of Arkansas, taken in the sum of fifteen thousand dollars, with Asa Hodges and C. W. Bryant as securities, which said bond is considered sufficient and approved by the court.

117 STATE OF ARKANSAS, *County of Crittenden:*

JAN'Y 4TH, 1875.

Be it remembered, that at a meeting of the county court, held at a regular term, on January 4th, 1875, there was present the Hon.

R. B. Barton, judge, D. W. Lewis, clerk, and E. B. Lewis, sheriff. Court being duly opened, the following proceedings were had, to wit:

The above order is the first evidence of Daniel W. Lewis, as clerk, the successor of W. D. Hardin, on the county court record.

The official register of officers shows that he, D. W. Lewis, was elected Oct. 13th, 1874. Commission dated Nov. 3d, 1874.

A. H. FERGUSON, *Clerk.*

STATE OF ARKANSAS, *County of Crittenden:*

I, A. H. Ferguson, clerk of the circuit court and *ex-officio* county clerk, do hereby certify that the above and foregoing orders are true copies of the county court record, as they appear county court
118 record, Crittenden county, Ark., and the official register of officers shows that D. W. Lewis was elected clerk of this county October 13th, 1874, and commission dated Nov. 3d, 1874.

Witness my hand and seal of office, this 17th day of April, 1882.

[L. S.] A. H. FERGUSON, *Clerk.*

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered that at a probate court of said county, begun and holden at the clerk's office (there being no court-house in said county), in the town of Marion, in said county, on the 15th day of January, 1872, the same being the 3d Monday in said month, and the time fixed by law for holding said court, was present and presiding the Honorable Thomas L. Dougherty, judge of said court, and was also in attendance W. D. Hardin, sheriff of said county, and John Swepston, clerk of said court, and, when the court was declared duly open, according to law, the following proceedings were had, to wit:

And on Tuesday, February 20th, 1872, it being a day of
119 said term, the following entry was made of record:

Estate of J. D. WARE, deceased, L. B. HARDIN, Administrator.

On this day comes John J. Ware, Maria Ware, James Moses and wife, Joe Lett and wife, Emma Ware, William Ware, and Maggie Ware, distributees and legatees of the estate of J. D. Ware, deceased, by attorney, and moved the court here to revoke and set aside the letters of administration granted by this court to L. B. Hardin upon the estate of J. D. Ware, deceased, and, in the event that this court should not see proper to revoke and set aside said letters of administration, said distributees and legatees hereby pray that this court require said administrator to give additional security as such; and the court having heard said petition, the evidence of witnesses, and the argument of counsel, and being fully advised in the premises, doth overrule the motion to revoke and set aside said letters, and doth order that said administrator give new bond, as such administrator, in the sum of fourteen thousand and five hundred
120 dollars, by the 27th day of February, 1872.

Thereupon petitioners, by att'y, move for appeal to the circuit court, which is granted.

MONDAY MORNING, *January 20th*, 1873.

Court met pursuant to adjournment; present and presiding, the Hon. M. H. Wing, judge, and was also present W. D. Hardin, sheriff of said county, by his deputy, E. B. Lewis, and John Swepston, clerk of said court, by his deputy R. F. Crittenden, when the following proceedings were had, to wit:

And on March 14th, 1882, it being a day of said term, the following entry was made of record.

Estate of J. D. WARE, dec'd, L. B. HARDIN, adm'r.

And on this day comes L. B. Hardin, administrator of the estate of J. D. Ware, deceased, and files his first annual settlement or account current of said estate and vouchers therewith, and the same being examined, found correct by the court, it is approved and confirmed and ordered to lie over until the next term of this
121 court, for exceptions, if any, to be filed.

And on the same day and at the same term the following entry of record was made.

Estate of J. D. WARE, dec'd, L. B. HARDIN, adm'r.

And now on this day comes L. B. Hardin and files his resignation of the administration of said estate, and the said administrator having fully settled all matters of account connected with the said administration, it is ordered that the same be, and is hereby, granted, and he be discharged from his bond given as such administrator.

And on the same day at the same term of the court the following entry was made on the record.

Estate of J. D. WARE, dec'd.

And on this day, upon the application in writing of W. D. Hardin, a creditor of said estate, it is ordered that C. W. Bryant be, and he is hereby, appointed administrator *de bonis non* of the estate of J. D. Ware, dec'd, and that he execute bond to be approved by the
122 clerk of this court in the sum of ten thousand dollars.

STATE OF ARKANSAS, *County of Crittenden:*

Be it remembered, that at a circuit court begun and held at the Methodist church, there being no court-house in the town of Marrion, county of Crittenden, and State of Arkansas, on Monday, the 23d day of February, 1874, it being the 4th Monday of said month, and the time fixed by law for holding said court.

There was in due attendance W. D. Hardin, clerk of said court, and E. B. Lewis, sheriff of said county, when said sheriff proceeded

to open court by proclamation. The Hon. John W. Fox, judge of said court, not being present, E. B. Lewis, sheriff of said county, proceeded to adjourn court until to-morrow morning, 9 o'clock a. m.

TUESDAY MORNING, *February 24th*, 1874.

Court met pursuant to adjournment. Present and presiding, the Hon. John W. Fox, judge of said court. There was also in attendance W. D. Hardin, clerk of said court, by his sworn deputy,
123 Reese Davis, and R. L. Hardin; also E. B. Lewis, sheriff of said county, by his true and lawful deputies, R. P. Keey and W. H. Hayward, when the following proceedings were had:

And on March 15th, it being a day of said term, the following order was made:

Estate of J. D. WARE, deceased.

On this day the final settlement of accounts of L. B. Hardin, hitherto administrator of said estate, is by the court referred to S. P. Swepston, Esq., as special master in this cause, to examine the same and report thereon at this term of this court.

And on March 16th, 1874, it being a day of said term, the following order was made:

No. 1. Estate of J. D. WARE, deceased.

And on this day the report of S. P. Swepston, special master, is filed, and the same approved by the court, and the said final settlement of L. B. Hardin, adm'r, approved and confirmed, and his securities discharged from their bond.

STATE OF ARKANSAS, *County of Crittenden:*

124 I, A. H. Ferguson, clerk of the circuit court and *ex officio* probate clerk for the above-named county and State, do hereby certify that the above and foregoing 9 pages show and contain a true, full, and complete copy of above-named orders as they appear of record in Probate Record D of this office.

Witness my hand and official seal of office, this 17th day of April, 1882.

[L. S.] A. H. FERGUSON, *Clerk.*

125 Pending in the United States Court for the Eastern District of Arkansas, on the Chancery Side.

BLAND P. BOYD, who sues as Administrator of the Estate of Jno. D. Ware, dec'd, *et al.*

vs.

WM. D. HARDIN and LIDA C. HARDIN.

Depositions of Miss Emma Ware and Bland P. Boyd, G. P. Ware, witnesses for the complainant, taken by consent in the presence of

the solicitors of complainants and defendants, on this the 27th day March, 1882, at the court-house in the town of Brownsville, Tennessee, taken before me as stated above.

Said witness, Miss EMMA WARE, being duly sworn, deposes as follows—whose age is thirty years:

Question 1st. By Compl't: Please state if you are one of the parties thtois suit?

Ans. 1st. I am.

Ques. 2. Are you one of the heirs-at-law of John D. Ware, dec'd?

Ans. 2. I am.

126 Ques. 3. State how many heirs-at-law and distributees of John D. Ware, and state who they are, and where do they reside?

Ans. 3. Four; Mrs. Mary Lett, wife of J. L. Lett, who resides in St. Louis, Mo.; Mrs. Susan R. Moses, wife of James P. Moses, who resides in Brownsville, Tenn.; Mrs. Maggie Klyce, wife of Thomas Klyce, who resides in Brownsville, Tenn., and the witness, Miss Emma Ware, who resides in Brownsville, Tennessee.

Ques. 4. Did your father reside in Haywood county, Tennessee, at the time of his death?

Ans. 4. Yes.

Ques. 5. Did your father leave a will, or did he die intestate?

Ans. 5. He left no will; died intestate.

Ques. 6. State who is the administrator of your father's estate in Tennessee?

Ans. 6. Bland P. Boyd, Esq., of Brownsville.

Ques. 7. State if you know the def't, Wm. D. Hardin; and,

127 if yea, state how long you have known him?

Ans. 7. I know him and have known him ten or twelve years.

Ques. 8. When did you first meet the def't Hardin?

Ans. 8. I first met him in Crittenden county, Ark., on my father's farm.

Ques. 9. Did your father, John D. Ware, have a farm in Crittenden county, Arkansas? If yea, please state as near as you can how long he owned it before he died.

Ans. 9. He owned a farm in Crittenden county, Ark. I cannot say how long exactly, but I think some twenty years or more.

Ques. 10. State, if you can, who is now in possession of the land your father owned.

Ans. 10. Mr. Hardin and Rob't Picket.

Ques. 11. The land which is now in dispute, who is in possession?

Ans. 11. Mr. Hardin.

128 Ques. 12. State if you know anything about your father selling the land in dispute and as set out in the bill to def't, Wm. D. Hardin?

Ans. 12. I was not there at the time it was sold.

Ques. 13. Before your father sold his land to def't, Wm. D. Hardin, where did he reside the most of the time, on the farm in Crittenden county or with his family in Brownsville, Tennessee?

Ans. 13. In Crittenden county, Arkansas.

Ques. 14. State if you visited your father in Crittenden county, Ark., any time during the year 1871.

Ans. 14. I was on the farm with my father from the 1st of December, 1870, to the first of March, 1871.

Ques. 15. State what caused you to go to see your father and why was it that you staid so long at that time.

Ans. 15. My father was sick and I could not leave him sooner. They telegraphed me to come.

Ques. 16. Was he confined to his bed the most of the time you were with him?

129 Ans. 16. All the time except the last two weeks, then he was able to be up some of the time in his room.

Ques. 17. State where was the def't Wm. D. Hardin living during the time you were there waiting on and nursing your father.

Ans. 17. At Marion, Arkansas.

Ques. 18. How often did he visit your family during that time?

Ans. 18. I don't remember that he was there but seldom, probably not more than once during my stay.

Ques. 19. Where did your father die, in Tennesse or in Arkansas?

And. 19. He died in Brownsville, Tennessee.

Ques. 20. At what time did he die?

Ans. 20. He died 5th December, 1871.

Ques. 21. What time did your father get to his home in Tennessee?

Ans. 21. He came home about the last of March, 1871.

130 Ques. 22. What was the condition of his health when he came home, and if any one came with him; please state who it was?

Ans. 22. His health was very bad, and Mr. Hardin came home with him.

Ques. 23. What time in the day was it your father got home?

Ans. 23. It was in the afternoon; I can't say at what hour; about night.

Ques. 24. What became of the def't Hardin after he carried your father home; did he leave right off, or did he stay all night at your father's house?

Ans. 24. He staid all night and the most of the next day.

Ques. 25. State if you had any conversation with Mr. Hardin about his buying the land in dispute from your father, and what he said we paid for it?

Ans. 25. We had a conversation about the purchase of the farm; he said he had paid very well for it; he gave or had paid ten thousand dollars cash in scrip of Crittenden county, Arkansas, and

131 the other ten thousand he was to pay, but I do not remember the time in which it was to be paid.

Ques. 26. How was the other ten thousand dollars to be paid, in scrip or in money?

Ans 26. My understanding was the *the* whole amount was to be paid in scrip.

Ques. 27. What you have stated in your answers to questions 25 and 26, does it embrace all the conversation you had with Mr. Har-

din; if it does not, please state any other or further conversation you had with him.

Ans. 27. We had further conversation, in which I told Mr. Hardin that he had swindled or cheated my father out of his plantation. He said I was very hard on him, but he had not cheated or swindled him, and he wanted me to make that place my home as I had always done, or come over there and stay, as I had done before.

Ques. 28. Where did he say he had left the ten thousand dollars in scrip, being the first payment on the land?

Ans. 28. Mr. Hardin stated to me, in the presence of my
132 father, that he had placed the ten thousand dollars in scrip in a sealed envelope and placed or had it placed in the safe of Messrs. Farrington and Howell, or H. B. Howell.

Ques. 29. State if you heard any conversation during the night he staid at your father's house, or the next morning, in reference to any stock, etc., which Mr. Hardin had purchased from your father after the sale of your father's land.

Ans. 29. During the night or the next morning Mr. Hardin told my father that he would return in the course of a week and bring him twenty-five hundred dollars in greenbacks, the amount he agreed to give him for the stock, farming tools, horse and buggy, &c., including all the farming implements on the farm.

Ques. 30. At any time after you got to your father, when he was sick, up to the time you left for your home in Tennessee, was he able to attend to any important businsss of any kind?

Ans. 30. I don't think he was.

133 Ques. 31. Was he, at any time after he got home, able to go and attend to business of any kind?

Ans. 31. He was not.

Ques. 32. Did he leave his room while you were with —— in Arkansas?

Ans. 32. He walked out a few times on the back gallery a short time before I left him for my home in Tennessee.

Ques. 33. Was he confined to his bed most all the time you were with him in Arkansas?

Ans. 33. He was confined to his bed all the time I was with him, with the exception of a short time before I left, when he was able to sit up and walk about the house—that was very little.

Ques. 34. State if his mind was impaired any while you were with him in Arkansas.

Ans. 34. It was.

Ques. 35. State the condition of his mind after he got home from Ark. up to the time he died.

Ans. 35. I don't think his mind was in a condition to attend to any business after he was taken sick.

134 Ques. 36. Did any of the heirs-at-law & distributees of your father's estate ever request Lucian B. Hardin to administer on your father's estate in Arkansas?

Ans. 36. No; but we requested W. D. Hardin not to have any-

thing to do with it, or any of them, for we would have some one else to attend to it for us.

Ques. 37. What time was it that you had the above conversation with Wm. D. Hardin?

Ans. 37. Only a few days after the death of my father, and then it was he said he had come up to settle with my father.

Ques. 38. What other conversation did you have with him in regard to what he owed your father?

Ans. 38 I had no other conversation with him in regard to what he owed my father.

Ques. 39. Was your father in debt to Wm. B. Hardin or Lucian B. Hardin?

Ans. 39. Not at all.

Ques. 40. At the time Mr. Hardin brought your father home, and in the conversation you had with him in regard to what he was
135 to pay for the farm, what did he say the scrip was worth?

Ans. 40. He said it was worth eighty cents on the dollar, and would be worth dollar for dollar.

Ques. 41. Where did the above conversation take place; and was it in the presence of your father?

Ans. 41. It was in the parlor, and not in the presence of my father.

Ques. 42. Are Mrs. Mary Lett and Mrs. Susan Moses married women; and were they married women at the death of your father?

Ans. 42. They are, and were at the death of my father.

Ques. 43. State whether or not your father was a man of means.

Ans. 43. He was.

Ques. 44. Did your father pay cash for things he purchased, or did he buy on credit?

Ans. 44. I cannot say how he conducted his business at Memphis; he always had means and paid cash for what he bought here, and made fine crops over there.

136 Ques. 45. Did your father repose great confidence in the truthfulness and integrity of Mr. Hardin or not?

Ans. 45. I don't know, as I never heard my father say but little about him as he was there only a little while I were there.

Ques. 46. Did your father run the farm that Mr. Pickett now owns and the one sold to Hardin?

Ans. 46. Yes.

Ques. 47. Did he own all the mules and horses on the farm which were used in running the farm?

Ans. 47. He had the place stocked himself; some of the hands owned some of the stock.

Ques. 48. Can you state how much land he generally cultivated on the farm?

Ans. 48. I do not know.

Ques. 49. How old is Mrs. Maggie Klyce, the wife of Thomas Klyce, and how long has she been a married woman?

137 Ans. 49. I think she is twenty-seven years old, and has been married over two years.

Ques. 50. Can you state the annual rental value of said land?

Ans. 50. I do not know.

Ques. 51. Please state the age of your father at the time he died.

Ques. 52. If you know [how] old your father was when he died, please state it.

Ans. 52. About sixty-three or four years.

Cross-examined by defendants' att'y, saving and reserving all questions as to relevancy and competency:

X 1. Was not your father a kind and indulgent parent, and did he not provide well and amply for his family at all times as long as he lived?

Ans. 1. He did.

X 2. Was he not a very shrewd business man, and did he not deal extensively and successfully for many years prior to his death?

Ans. 2. He did.

138 X 3. You speak of having visited your father in Crittenden county, Ark., in the fall of 1870, during his illness; how long had he been ill, and what was the nature of that illness?

Ans. 3. He had been ill several days before he dispatched. I cannot say what was the nature of his disease.

X 4. How long did you remain with your father, and did you leave him before he was nearly well or on the road to rapid recovery?

Ans. 4. I remained with him about three months; he was improving when I left him, but he never did recover.

X 5. How long after you returned home was it before your father came over to Brownsville, and why was it that he did not return with you?

Ans. 5. He was not able to come with me, and came home in a few weeks.

X 6. As a matter of fact, were you not unhappy that your father would continue to reside in Arkansas, because of the fact that
139 it was an unhealthy climate, and the further fact that at that time the law was not enforced, and a man had no security of his life or property in that particular section of Arkansas?

Ans. 6. Yes, sir.

X 7. Had you not repeatedly implored your father to sell the farm in question and leave the State, and did you not, while there, during his illness, beg him to sell at some price and return to Tennessee?

Ans. 7. I begged him to either sell or rent his farm, and leave there on account of his health.

X 8. You did not care what he did with it, so you could induce him to leave?

Ans. 8. I wanted him to leave there and come home till his health was better.

X 9. Do you know what was the value of said plantation in 1871?

Ans. 9. I did not know anything about the value of the land, and could not say what it was worth.

140 X 10. Did you ever hear your father and defendant Hardin discuss the sale of said farm to Hardin. If yea, state what was said.

Ans. 10. Only that I heard him say that he had sold the place to Mr. Hardin.

X 11. Your father was an active business man up to the time he was taken sick in the fall of 1870, and was a gentleman of remarkable intelligence, was he not?

Ans. 11. Yes, sir.

X 12. Did he ever leave the house after his return to Brownsville, and was he able to walk about the streets during the period between his return and his death?

Ans. 12. He was confined to the house, and was brought up in town only a few times in his buggy by my brother, and carried right back.

X 13. Did he transact business of any character during the above specified interval?

Ans. 13. He did not; he was confined to his bed nearly all the time.

141 X 14. When you left him in Ark. did you then think he was out of his mind?

Ans. 14. Yes, sir.

X 15. Did not your father have a considerable sum of money when he returned home?

Ans. 15. If he did I never knew it.

X 16. Why do you suppose the mind of your father was impaired; is the supposition based simply upon the general debility resulting from illness or upon certain acts of his?

Ans. 16. I think it was on account of his ill health, as his mind was always good up to the time of his illness.

X 17. What you mean to say, then, is that he was very feeble, just as most people are after a severe and protracted illness?

Ans. 17. I cannot say that most people are so, but I am of the impression that the weakness of his mind was caused by his illness.

142 X 18. Did your father have brain fever or any disease which affects the brain peculiarly?

Ans. 18. I thought he had consumption, but all his physicians said not. I did not know what was the matter with him.

X 19. Do you not think that the fact that you and your father's other children were so desirous of his returning to Brownsville was the prime cause moving him to make the sale to Hardin?

Ans. 19. I do not. He always said he did not desire to part with that farm, as he thought it would be a good property for his children.

And further this deponent saith not.

EMMA WARE.

Sworn and subscribed to before me, this 28 March, 1882.

—— ——

143 G. P. WARE, witness for complainant, being duly sworn, deposes as follows:

Int. 1st. By COMP'T: What is your age and residence, and how long you have resided there?

Ans. 1. My age is over sixty, and Brownsville has been my residence the larger portion of my life.

Ques. 2. What relationship did you bear to John D. Ware, dec'd?

Ans. 2. He was my brother.

Ques. 3. Do you know anything about your brother, John D. Ware, on or about 28 March, 1871, selling an undivided interest in a tract of land in Crittenden county, Arkansas, to W. D. Hardin?

Ans. 3. Legally, I know nothing about it.

Ques. 4. Did you see your brother, John D. Ware, when he was returning home from Crittenden county, Ark., in the spring of 1871?

Ans. 4. I was living in Memphis at the time, and met him at the store of Farrington & Howell, on Front row.

144 Ques. 5. Are you acquainted with defendant, Wm. D. Hardin?

Ans. Yes, sir.

Ques. 6. When you met your brother in Memphis, Tennessee, what was his physical condition?

Ans. 6. He was in very feeble health, and his mind much impaired.

Ques. 7. Please state the exact condition of his mind.

Ans. 7. I thought his mind was very much impaired, and he was entirely unfit to attend to any business transactions whatsoever.

Ques. 8. Did you see him any more after the time you saw him in Memphis?

Ans. 8. I never saw him any more. I am so constituted that I cannot bear to see any near and dear relation in a suffering condition, hence I never came to see him afterwards.

Ques. 9. Are you acquainted with the land, as set out in
145 comp't bill, marked Exhibit A?

Ans. 9. I have been on the land, but I do not know the lines or boundaries of the same.

Int. 10. In 1871, what would that land have sold for?

Ans. 10. I cannot say, as I was not in that business, but it was considered very valuable.

Ques. 11. Do you know about how many acres of open land there were in the whole tract?

Ans. 11. I do not.

Ques. 12. How long had your brother owned and run the farm before he sold the same?

Ans. 12. I can't be positive, but I think he ran the farm from about 1857 or 1858 until he sold it.

Ques. 13. State if he owned the stock which was used on the farm.

Ans. 13. Yes, sir.

Ques. 14. State, if you knew, the pecuniary condition of
146 your brother for several years before he died.

Ans. 14. He was in easy circumstances; owed but little, ex-

cept a note I paid for him, and he would have paid that if he had not been sick in bed; he requested me to pay it for him, and as soon as he got up he would pay me.

Ques. 15. Do you know anything about your brother owing the def't, Wm. D. Hardin, anything?

Ans. 15. If there was any truth in man, he did not owe him a dollar.

Ques. 16. Was your brother, John D. Ware, successful in his farming operations in Crittenden Co., Ark.?

Ans. 16. He was tolerably successful; above medium.

Ques. 17. Did he contract any debts around his farm in Crittenden county, or did he keep his accounts squared up?

Ans. 17. If [he] contracted any debts around in the neighborhood, it was only small; he did most of his heavy business in Mem-
147 phis, and settled up everything at least once a year.

Ques. 18. Do you know what Crittenden county scrip was worth during the year 1871—about the time you met him in Memphis on his way home?

Ans. 18. I did not trade in scrip, and did not know, but was impressed with the belief that it was worth but little, and only got my information from what men said that traded in it.

Cross-examined by defendants' counsel, saving and reserving all questions as to relevancy and competency, &c.:

X 1. How do you know that your brother never was indebted to Hardin?

Ans. 1. From what my brother and Mr. Hardin both told me, and he owed my brother for the stock he purchased of him.

X 2. Did you ever hear your brother and Hardin talk about this transaction to each other or in each other's presence; if yea, when, where, who was present, and what was said?

Ans. 2. No, sir; Hardin said to me that he would come up
148 in a few days and bring my brother some money; it was in Memphis, and no one present.

X 3. How long did you talk with your brother when you met him in the house of Farrington & Howell, in Memphis, in the spring of 1871?

Ans. 3. I cannot say; it was some time; it was probably an hour or two; it has been so long I cannot now say.

And further this deponent saith not.

G. P. WARE.

Sworn and subscribed to before me, this 27 March, 1882.

W. A. ALLEN, *Notary Public.*

The further taking of these depositions was continued over until to-morrow morning, March 28, 1882.

W. A. ALLEN, *Notary Public.*

March 27, 1882.

The further taking of this deposition was resumed on March 28, 1882.

W. A. ALLEN, *Notary Public.*

The deposition of BLAND P. BOYD, witness for complainant, aged 43 years, who, being duly sworn, deposes as follows:

Quest. 1. Are you the administrator of the estate of John
149 D. Ware, dec'd. If yea, state when and where you took letters of administration, and before what court?

Ans. 1. I am the administrator. I was appointed Jan'y term, 1872, by the county court of Haywood county, Tennessee, and here exhibit my letters of administration, marked Exhibit A to this deposition, and made part to the same.

2nd. Please state what effects or assets of said estate came into your hands as such adm'r.

Ans. 2. There were considerable effects. Among those effects were a due bill on W. D. Hardin for $510.25, dated July 8, 1870, and $5,400 and odd dollars in Crittenden county scrip, State of Ark., and about $360.00 in money, and various other notes & acc'ts, most of which were insolvent.

3. Did you or not ever present the due bill spoken of above to W. D. Hardin for payment? If yea, state where, and when, and what occurred between yourself and said Hardin about the same.

150 Ans. 3. Yes, sir. As I stated that I was appointed administrator at the Jan'y term of the county court of Hayward county, Tennessee, at the request of the heirs-at-law of John D. Ware, dec'd. As soon afterwards as convenient I proceeded with Dr. J. J. Ware, who is now dead, to Marion, Crittenden county, Ark., for the purpose of looking after the interest of said estate. After I got to Marion I found out that the administration of Mr. Ware's estate in Ark. had been granted to one L. B. Hardin, a brother of the defendant. During my stay in Marion I saw W. D. Hardin in regard to the payment of said due bill or note. He promised to pay the same, I think, in a short time, which he failed to do. I afterwards brought suit through Smith and Collier, att'eys-at-law, at Memphis, Tenn. Judgment was for about $700, about $500 of which was paid, and the balance of which was unpaid. The judgment was for county scrip of Crittenden county, Ark., and the $500 was paid in scrip.

151 4. Is the county scrip spoken of in your last answer part of the same as you received as adm'r as reported in answer to question 2nd of your deposition-in-chief?

Ans. 4. No, sir.

5. Who paid you the $5,400.00 dollars in Crittenden county, Ark., scrip, or how did same get into your possession as adm'r?

Ans. 5. After I administered I went to Memphis, Tenn., and H. B. Howell & Co., or Farrington and Howell, turned over to me a large sealed envelope containing the $5,400 Crittenden county scrip and $250 in money, which money was not in the envelope, but was handed to me by Mr. H. B. Howell & Co.

6. Whose property was this they turned over to you as adm'r, and what explanation, if any, was given you in regard to same by those who paid it over to you?

Ans. 6. It was turned over to me as the property of J. D. Ware, dec'd.

152 7. Did you or not ever collect any money belonging to the estate of J. D. Ware, dec'd, from any one in Crittenden county, Ark.? If yea, state the amount, and from whom you collected.

Ans. 7. I did; I collected about $150 from Dr. Grigsby on a note or acc't he owed the estate of J. D. Ware, and one Mr. Dorety, a citizen of Crittenden county, Ark., paid me on a note for land several hundred dollars, the precise am't I do not now remember. This was all the money I now remember to have received in Ark. on account of said estate.

8. Did you or not have frequent conversations with W. D. Hardin in regard to the interests and business of your intestate estate? If yea, state if said Hardin ever claimed that Jno. D. Ware, dec'd, or his estate owed him, Hardin, anything, or did he ever exhibit to you any claim against said estate.

Ans. 8. I did; and he never claimed that the estate owed him anything.

153 9. When you presented the due bill or note $510.25 against W. D. Hardin, in favor of the estate of Jno. D. Ware, dec'd, to him for payment, did he not, at that time claim any offsets against the due bill or claim that Ware owed him anything? If so, state what he said.

Ans. 9. He did not.

Ques. 10. Were you acquainted with Jno. D. Ware in his lifetime? If so, please state his standing financially, and if he was a man of means or not.

Ans. 10. I was acquainted with him, and his financial standing was good, and he was a man of means.

Reserving and saving all questions as to relevancy, competency, &c., defendants' counsel declines to ask a question.

And further this deponent saith not.

B. P. BOYD.

Sworn and subscribed before me, this 28 day of March, 1882.

W. A. ALLEN,
Notary Public.

154 The deposition of Dr. J. G. HAYWOOD, witness for complainants, of lawful age, who, being duly sworn, deposes as follows:

Ques. 1. Please state if you are acquainted with the complainants in this cause.

Ans. 1. I am.

Ques. 2. Did you know John D. Ware in his lifetime?

Ans. 2. I did.

Ques. 3. State whether or not you are a practicing physician; if yea, state how long you have been a physician.

Ans. 3. I am, and have been practicing about thirty years.

Ques. 4. State where [you] reside and have resided since you have been practicing physician.

Ans. I have resided in Brownsville, and practiced in Haywood county, Tennessee.

Ques. 5. State, Doctor, whether or not you attended John D. Ware during his last illness.

155 Ans. 5. I attended him in his last illness.

Ques. 6. Do you now remember his physical and mental condition during the time you attended him as a physician?

Ans. 6. I remember pretty well what caused his death.

Ques. 7. Were you sent for as a physician immediately after his return home from Arkansas?

Ans. 7. I saw him a few days after his return, at our office; his son and myself were partners in the practice of medicine.

Ques. 8. Please state, as near as you can, about the time he came from Arkansas.

Ans. 8. I cannot say what time; I remember it was warm weather; I cannot say whether it was in the early part of the summer or the latter part; he had on summer clothing.

Ques. 9. At the time you say that John D. Ware came to your office, how long [did] he stay?

156 Ans. 9. At the time I speak of that he came to our office, he came as a visitor, and not to see us professionally; I can't say how long he stayed.

Ques. 10. Please state his condition, physically, at the time you attended him as a physician.

Ans. 10. Soon after he got home I was consulted by his son in reference to his condition; it was by no means favorable; he was suffering under a chronic chill influence; that condition continued up to the time of his death, and he died of a general dropsy induced by that chronic influence.

Ques. 11. At the time you saw him as a physician, was he, or was he not, in a very feeble and emaciated state?

Ans. 11. He was very much debilitated, and a great sufferer from the beginning.

Ques. 12. At the time you saw him, was his mind in an impaired state?

Ans. 12. His mind was impaired in sympathy with his body.

157 Ques. 13. From the first time you saw him, would you say that his physical and mental condition were so much impaired that he would be incapable, physically and mentally, of making an important business transaction?

Ans. I am not prepared to answer definitely. I think that Mr. Ware thought that his weakened condition was the result of his location in that malarial district, and that he would have made most any sacrifice to get away from there, and any fellow being sharp enough to take advantage of that condition, he might have made a very injudicious trade.

Ques. 14. State if Mr. Ware, after he returned from Arkansas, was confined to his bed & room, most of the time, until he died.

Ans. 14. After the first few weeks after his return, I think he was.

Ques. 15. Did Mr. Ware, after his return from Arkansas, attend to any business here?

Ans. 15. I don't think he did.

Saving and reserving all questions as to relevancy and
158 competency, defendants' counsel proceeds to cross-examine:

X 1. Doctor, when you speak of the mind of Mr. Ware being impaired, do you mean to say that his mind was not so strong and active as usual, but was somewhat enfeebled through physical debility, as is usual through and after a severe illness?

X Answer 1. I mean to say that I think his mind was so impaired and debilitated from his sickness that he might have been imposed upon.

X 2. Doctor, you do not mean to say that Mr. Ware was demented or an imbecile, but simply that through feebleness of mind, consequent upon his illness, he might have been imposed on.

X Ans. 2. I do not mean that he was an imbecile, but from his illness he was to a certain extent incapacitated for attending to business.

And further the deponent saith not.

J. G. HAYWOOD.

Sworn and subscribed to before me, this 28th March, 1882.

W. A. ALLEN,
Notary Public.

159 The testimony of JAMES P. MOSES, witness for complainants, aged 42 years, being duly sworn, deposes as follows:

Ques. 1. State whether or not you are one of the parties to this suit.

Ans. 1. I am.

Ques. 2. State where you reside.

Ans. 2. I reside in Brownsville, Tennessee.

Ques. 3. State if you know the time John D. Ware, dec'd, returned from Arkansas.

Ans. 3. About the last of March or first of April, 1871.

Ques. 4. State whether or not Mr. Ware, during his lifetime, had a plantation in Crittenden county, Arkansas.

Ans. 4. He did.

Ques. 5. Can you state the amount of open land in the plantation?

Ans. 5. I cannot say definitely, but there were several hundred acres.

160 Ques. 7. Where did Mr. Ware's family reside?

Ans. 7. In Brownsville, Tennessee.

Ques. 8. State, if you can, if Mr. Ware spent the most of his time on his plantation, in Crittenden county, Arkansas.

Ans. 8. Nearly all of his time.

Ques. 9. Do you know what time Mr. Ware sold, or pretended to sell, his plantation in Crittenden county, Ark.?

Ans. 9. In the spring of 1871.

Ques. 10. Do you know the condition of Mr. Ware's health when

he came home from Crittenden county? If you do, please state it.

Ans. 10. He was very feeble in body and mind.

Ques. 11. Do you know of any one coming home with Mr. Ware from Crittenden county, Ark.? If you do, please state who it was.

Ans. 11. W. D. Hardin, one of the defendants in this cause, brought him home.

161 Ques. 12. State what relationship you held to John D. Ware, dec'd.

Ans. 12. I married his daughter Susan.

Ques. 13. State whether or not you visited Mr. Ware any during his last illness; if you did, please state how often, and what length of time you would stay with him.

Ans. 13. I lived very close to him, and I was with him fully half my time and waited on him; my wife and his other daughters were with him all the time, night and day.

Ques. 14. How long did he remain sick before he died?

Ans. 14. He came home sick and remained so until he died in December, 1871.

Ques. 15. State if Mr. Ware, during his last sickness and after he returned from Arkansas, was confined to his bed and room?

Ans. 15. I think he was; I remember that I took him in a
162 buggy once during the time, and brought him up in town and carried him back; I don't think he got out of the buggy; I don't remember of his coming out any more, but he might have been brought out at some other time.

Ques. 16. How long after he returned from Arkansas before you saw him?

Ans. 16. I think I was at his house the night he came home.

Ques. 17. Was Mr. Ware a great sufferer the first time you saw him after he was brought home by the defendant Hardin?

Ans. 17. He was.

Ques. 18. Can you state what was the matter with him?

Ans. 18. I cannot, but there seemed to be a general giving away of both body and mind.

Ques. 19. After Mr. Ware returned home from Arkansas, did he attend to any business here?

163 Ans. 19. He did not; he was incapable of attending to any business.

Ques. 20. The first time you saw him after he returned home from Arkansas, was he much reduced in flesh?

Ans. 20. He was reduced greatly in flesh.

Ques. 21. Can you state whether or not Mr. Ware took his bed immediately after his return from Arkansas?

Ans. 21. He did, immediately.

Ques. 22. From your knowledge of the infirmities of Mr. Ware at the time you first saw him, would you say that he was physically and mentally incapable of transacting any important business?

Ans. 22. I should say he was not.

Ques. 23. You stated that Mr. Ware's mind was very much impaired; now, state why you say that his mind was bad.

Ans. 23. From my living with him I found that he often acted strangely, and answer- questions in a confused manner.

164 Cross-examination by defendants' counsel, saving and reserving all questions as to relevancy and competency, &c.:

X 1. What is your occupation?

X Ans. 1. I was, at the time Mr. Ware returned, a salesman in dry goods store, and continued as such until 1874; since that I have been farming and clerking alternately.

X 2. Do you mean to say in your answer-in-chief that the late John D. Ware was a crazy man or an imbecile, or do you simply mean that he was physically very weak, and that his mind sympathized with his physical condition?

Ans. 2. I do not think he was a crazy man or an imbecile, but I think he was physically worn out and his mind was not right.

X 3. Why do yon think his mind was not right? Mention some strange or peculiar conduct of said Ware, deceased, upon which you base your supposition, if such there be.

165 X Ans. 3. From my being with him and the way he would ask and answer questions which were not connected with the conversation or the questions asked him.

X 4. About what date did you first notice that anything appeared wrong with Mr. Ware's mind?

X Ans. 4. I thought from the time he got home that his mind was not right.

And further this deponent saith not.

J. P. MOSES.

Sworn and subscribed to before me, this 28 ——, 1882.

W. A. ALLEN, *Notary Public.*

166 STATE OF TENNESSEE, *Haywood County:*

At a county court begun and held in and for the county of Haywood and State of Tennessee, at the court-house, in the city of Brownsville, Tennessee, on the 1st Monday in January, it being the 1st day of said month, A. D. 1872.

Present and presiding: R. S. Thomas, chairman; J. B. Compton, C. Spencer, F. W. Chaney, L. W. Daniels, W. Sangster, J. M. Moore, J. B. Anderson, Asa Dean, J. J. Jones, W. B. Moore, A. J. Outlaw, W. M. Walker, J. C. Best, J. A. Byars, R. Hill, H. G. Winburn, L. Y. Bledsoe, Alfred Moore, W. V. McMahen, C. R. Johnson, L. T. Harts, Henry Buck, James Whitehead, J. H. Estes, W. B. Lanier, Thomas S. Neal, G. W. Bond, E. D. Williams, O. Alexander, esquires. Also, John L. Sherman, sheriff, and Jno. L. Posten, clerk. The following proceedings were had, to wit:

B. P. Boyd, Adm'r of J. D. Ware.

On motion, B. P. Boyd, this day came into court, was appointed administrator of the estate of J. D. Ware, dec'd.

167 Thereupon the said B. P. Boyd was duly qualified, entered into, and acknowledged his bond in the sum of ten thousand

dollars, with S. W. Boyd, W. M. Whitelaw, R. S. Porter, and C. A. Kirby as his securities, who severally acknowledged said bond in open court, and ordered to be recorded. Ordered that letters of administration issue to said B. P. Boyd.

B. P. BOYD,
Administrator of J. D. Ware, deceased.

County Court, January Term, 1872.

(Copy of Bond.)

Adminirator's Bond.

STATE OF TENNESSEE, *Haywood County:*

We, B. P. Boyd, S. W. Boyd, R. S. Porter, C. A. Kirby, & W. M. Whitelaw are bound to the State of Tennessee in the penalty of ten thousand dollars.

Witness our hands and seals, this 2d day of Jan'y, 1872.

168 The condition of this obligation is such, that whereas the bond of the above bound B. P. Boyd, has been appointed administrator of J. D. Ware, deceased:

Now, if the said B. P. Boyd shall well and truly perform and discharge all the duties and obligations which are or may be required of him by law to be performed and discharged as such administrator, then this obligation shall be void; otherwise to be and remain in full force and virtue.

B. P. BOYD. [SEAL.]
S. W. BOYD. [SEAL.]
W. M. WHITELAW. [SEAL.]
R. S. PORTER. [SEAL.]
C. A. KIRBY.

Witness:
JAS. A. POSTON, *Dep't Clerk.*

Approved by the court, Jan'y term, 1872.
ROB'T S. THOMAS, *Chairman.*

Copy of Letter.

STATE OF TENNESSEE, *Hayward County:*

To P. B. BOYD:

It appearing to the county court, now in session, that J. D. Ware has died, leaving no will, and the court being satisfied as to your claim to the administration, and you having given bond and qualified as directed by law, and the court having ordered that letters of administration be issued to you, these are therefore to authorize

169 and empower you to take into your possession and control all the goods and chattels, claims and papers of the said intestimate, and return to our next county court a true and perfect inventory thereof, to collect and pay all debts, and to transact all the business in relation to said estate which lawfully devolves on you

as administrator. And after having settled up said estate, to deliver the balance which may remain in your hands to those who are by law entitled to receive the same.

Witness Jas. A. Poston, dept. clerk of our said court, at office, this the 2nd day of January, 1872, and year of American Independence.

J. A. POSTON, *D. C.*

STATE OF TENNESSEE, *Haywood County*:

I, M. Boyd, clerk of the county court of said county, certify that the foregoing three pages contain a true copy of the opening of said county court, at its January term, 1872, and of the order of said court appointing B. P. Boyd administrator of J. D. Ware,
170 dec'd, and of the bond of said B. P. Boyd as such administrator, and of the letters of administrution issued to same, as the same appears of record now on file in my office.

Witness my hand and official seal [of] office, in Brownsville, Tenn., this 29th day of March, 1882.

[L. S.] M. BOYD, *Clerk.*

171 DEPOSITIONS FOR DEFENDANT.

Deposition of Berkshire.

Taken by consent of counsel at the office of Hunsdont Cary, in the city of Memphis, Tennessee, all matters of form being waived, on the 14th day of October, 1882, in presence of counsel for plaintiffs and defendants.

My name is William H. Berkshire; I reside in Shelby county, Tennessee, and am in the 58th year of my age.

I knew Jno. D. Ware in his lifetime. He was a man of sound mind, fully capable of managing his own affairs, and in matters of trade he was shrewd. I had a good opportunity to know, for I was in partnership with him for about four years, until he went into the planting business with Wm. D. Hardin, and for a while afterwards, and was in partnership with him at the time Wm. D. Hardin purchased his plantation from him. He told me all about selling his place to Wm. D. Hardin; said he got twenty thousand dollars in Crittenden county scrip for the land. The stock, &c., was another matter.
172 That he sold for cash. The way he came to tell me about it was that I asked him, and he told me very fully. I asked him why he had sold the land for Crittenden county scrip. He said, I will tell you. It is bound to be good, and is drawing six per cent. interest, and the place has been an expense and a source of annoyance to me for years, and I wanted to get rid of it and go to Brownsville to live. He said he was satisfied with the trade, and thought he had made a good one. Crittenden county scrip was, as I recollect, selling at about seventy-five cents on the dollar at that time. I think he got a good price for the place when he sold it. I would not consider the place worth near that much now. I think $5,000.00 would be a fair price for it now, as there is some very poor land on it.

I don't believe that Mr. Hardin or any other man could get any

advantage of Mr. Ware in a trade. He was wide awake and shrewd in trading, and I consider him equal to any man in that respect.

About the time Mr. Hardin went into the farming business with Mr. Ware, Mr. Ware had his corn-crib and corn destroyed
173 by fire, and sustained some losses by depredations from the State militia, and was rather hard up and pushed for money. Mr. Hardin had plenty of money at the time, and furnished the money to replenish the losses and keep up the farm. And Hardin had great influence and control over the negroes in the county at that time, and I suggested to Mr. Ware these advantages in a partnership with Hardin, who had money and could control plenty of labor.

Before Mr. Ware left there he told me, as I have before said, that he had sold his land to Hardin for $20,000.00. Crittenden county scrip, and the personal property for money. He told me that he was anxious to go to Brownsville, but that Hardin had not paid him the money for the personal property he had sold him, and that he needed money, and did not intend to leave until Hardin had paid him. That he would not go till he got the money.

Mr. Hardin commenced with Ware in 1869. The sale of the land took place about 1871; and when I speak of the price of county scrip, I mean the price of it at that date. A year or two after that I took some Crittenden county scrip in a transaction at sixty cents, and afterwards got the full face value of it.

174 On December 30, 1882, the further taking of this deposition having been by consent of counsel adjourned indefinitely, to be resumed at convenience of counsel, comes the witness and R. F. Crittenden, of counsel for plaintiffs, and said Crittenden proceeds to cross-examine said witness as follows:

I was Mr. Ware's partner in a saw-mill. I managed the business of the mill exclusively. Ware had nothing to do with its management. I sold my part of the mill to W. D. Hardin. I am under the impression that he had bought Mr. Ware's interest in the mill just before I sold to him. He had bought Mr. Ware's farm, and it is possible that the mill went in as part of the trade, but of this I am not certain.

I had no partnership with Mr. Ware after I sold out of the mill.

Mr. Hardin was not present at the time Mr. Ware told me about having sold out his plantation to him (Hardin), as stated in my examination-in-chief. Mr. Ware depended upon those who attended to business for him almost entirely. He stayed a great part of his time indoors. I don't know the value of Crittenden
175 county scrip about 28th Feb'y, 1872. So far as land in Crittenden county was concerned, I do not know what its rental value was, but I suppose seven dollars per acre would not have been more than a reasonable price for it at that time. Since then lands have come down in rental value, and I suppose five $\frac{50}{100}$ dollars would be a fair average rental value for the whole time.

I do not know whether Hardin ever paid Mr. Ware for the personal property he purchared or not. This was a separate transaction and was to be paid in cash by Hardin.

I knew Luke Hardin; he is dead. I think W. D. Hardin exercised great influence over Luke Hardin, Luke would do anything that W. D. told him to do, and would not do anything he told him not to do.

I also know Chas. W. Bryant, a lawyer. I think he was an unscrupulous man. I don't know whether W. D. Hardin exercised any under influence over Mr. Ware or not. And further deponent saith not.

WM. H. BERKSHIRE.

Subscribed and sworn to before me, Dec. 30, 1882.

[L. S.] HUNSDON CARY,
Commissioner for Ark's at Memphis, Tenn.

176 And the next witness, E. M. Apperson, being of lawful age, and being duly sworn says:

That on the 16th day of April, 1872, he purchased from Wm. D. Hardin thirty-three hundred and eleven and $\frac{99}{100}$ dollars of Crittenden county, Arkansas, scrip, and paid him for the same sixty cents on the dollar. For this reason, I believe the price of such scrip at that time was about sixty cents on the dollar.

E. M. APPERSON.

Subscribed and sworn to before me, this October 14th, 1882.

[SEAL.] HUNSDON CARY,
Com'r for Ark's in Tenn.

Depositions of Dougherty et al.

Depositions of Peter G. Dougherty, H. T. Callaway, E. B. Lewis, A. M. Clemments, Asa Hodges, and W. D. Hardin, taken before me, special commissioner, by consent at my office, in the town of Marion, in county of Crittenden and State of Arkansas, commening on the 28 day of September, A. D. 1882.

177 Peter G. Daugherty a witness of lawful age was then and there to me produced by the defendants, and after being by me duly sworn upon oath to tell the truth, the whole truth and nothing but the truth, says:

My name is Peter G. Dougherty; I am 33 years old; I live in Crittenden county, and am by occupation a farmer. I knew John D. Ware in his lifetime up to and after the trade with W. D. Hardin; I also know W. D. Hardin.

I considered John D. Ware a very good business man. I could never see anything wrong with him. I have had business transactions with him and always considered him competent, and I knew of other persons who had business transactions with him. I never estimated him as being a man of feeble mind, and do not think he could be easily taken advantage of. I knew Ware but a short time before he traded with Hardin, and he was conducting his own business very well.

Cross-examination:

Said Ware and W. D. Hardin were farming together upon the

lands the subjects of this suit. I do not know the age of Mr.
178 Ware, but he was pretty old. W. D. Hardin at that time was a young, active man, and W. D. Hardin managed the business of the place after they went into partnership, and was the leading spirit in the farming transaction. I rented some land from Mr. Ware at one —, and that was the only transaction that I remember of; and I know that Charley Balch had business transactions with him.

Ware did not travel around much. I do not know the character or the extent of the influence that Hardin had over Ware, if any. I knew Lucian B. Hardin; he is dead, and he was a brother of W. D. Hardin, and at one time he was the admiaistrator of said Ware's estate. I do not know the extent or character of the influence exercised over L. B. Hardin by W. D. Hardin, if any. I have been living in Crittenden county since the year 1869, and am, more or less, familiar with the current price of county scrip of Crittenden county since that time. I do not know the price of Crittenden county scrip on or about the 28th day of March, A. D. 1871.

I am familiar with the lands purchased by said Hardin
179 from said Ware. The annual rent of said lands so purchased by the said Hardin from the said Ware would equal the sum of seven hundred and fifty dollars per year to this time.

The undivided half interest of the said plantation sold to W. D. Hardin by the said Ware was worth, about March the 28th, 1871, about six thousand dollars.

P. G. DAUGHERTY.

Deposition of H. T. Callaway.

H. T. CALLAWAY was also produced before me, and after being duly sworn, says:

My name is H. T. Callaway; I live in Crittenden county, and am about 54 years of age, and by occupation a farmer; I knew John D. Ware tolerably well in his lifetime, and I know W. D. Hardin. As far as my knowledge is concerned, Mr. Ware was a good business man, capable of attending to his own business and did so, and did a considerable business in the way of planting and carrying on a saw-mill.

Mr. Ware, not to my information, was consi'ered a feeble man either in body or mind.

I knew Mr. Ware up to about the time he left here, after
180 he and Hardin had traded.

I do not think Mr. Ware could be easily taken advantage of, but I do not know, as I had no business transaction with him. He was pretty shrewd in the Freedman's bureau business.

I sold Mr. Hardin 40 acres of land about '70 or 1871, some where along there—I do not know the year—for one thousand dollars cash, but he did not have the money, and I took it in Crittenden county scrip, as it was about equivalent to cash. I made and had the transaction with W. D. Hardin, but think I made the deed to the land to R. L. Hardin, a brother of W. D. Hardin, and got the scrip from W. D. Hardin.

Cross-examination:

The 40 acres of land that I sold W. D. Hardin, about which I have spoken heretofore, had about 10 acres cleared on it, and one small cabin. I don't know who owns the land now, but I think it belongs to Jas. Loyd's estate. The place upon which I live was sold under a deed of trust that I executed to the said R. L. Hardin about Jan'y, 1877, and was bid off by L. P. Swepston for Lida C. Hardin,
181 one of the defendants in this case, from whom I claim to have redeemed it, and now owe her $1,300. She executed to me no deed nor title-bond, but only a contract, allowing me so many years to redeem the place. I don't know the date of the contract, but have made two crops on the place since its execution, but have not paid any part of the thirteen hundred dollars, the original redemption price.

Lida C. Hardin is a wife of the said W. D. Hardin.

H. T. CALLOWAY.

Deposition of E. B. Lewis.

E. B. LEWIS was also produced before me, and, after being duly sworn, says:

My name is Edward B. Lewis; I reside in Crittenden county. My age is about 39 years, and am by occupation a farmer.

I was sheriff of this county five years, between 1872 to 1877. I was well acquainted with John D. Ware and W. D. Hardin.

Mr. Ware was a man of good sense, and was capable of attending to business. I do not know as to his management; I never had any business with John D. Ware. I do not know whether he was feeble
182 in body or mind, or not. I always considered him capable of taking care of his own business. I have had transactions with W. D. Hardin. I have paid W. D. Hardin county scrip for debts I owed him. 1872 I owed him three thousand dollars, and paid him about half of it in Crittenden county scrip, dollar for dollar, and while I was sheriff I redeemed scrip from W. D. Hardin, dollar for dollar. I think Ware and Hardin traded in 1877. Scrip at that time was worth about 75 to 80 cts. on the dollar, and at that time one-half of Ware's place was worth four or five thousand dollars. It is very poor land. The amount of rent on an average for the Ware place is worth about four dollars and a half per acre.

Cross-examination:

Question. Is it not a fact that for fifteen years last past yourself and Wm. D. Hardin have been socially, politically, and otherwise warm personal friends, and alternating and holding, governing, and controlling the various offices of Crittenden county?

Answer. No, sir; I have not been controlling the various offices of Crittenden county. Yes; we are particular friends, and have been
183 for years past. Since 1868 Mr. Hardin held the offices of sheriff, clerk, and treasurer in this county, in all eleven years, and I have held the offices of sheriff, assessor, and constable.

Question. Is it not a fact that on or about March, 1871, the time

at which W. D. Hardin was negotiating a trade with said Ware for said land, he, Hardin, lived in the house with the said Ware and exercised an undue and improper influence over the said Ware?

Answer. I do not know what year he lived with Ware; I do not really know that he ever lived with him. If he exercised an undue influence over Ware I did not know it.

Question. Did you know W. S. Reid, Benj. S. Wing, and M. H. Wing, about March, 1871; if yea, is it not a fact that W. D. Hardin, then sheriff of Crittenden county, would take, you said, Wings, or one of them, and said Reid, separately or together, and go to the house of the said Ware, and, in the presence of said Ware, make a Crittenden county scrip transaction by which you or they would deliver to the said Hardin, Crittenden county scrip upon a basis of 75 cts. on the dollar, which he, the said Hardin, would then and there deliver to them with the understanding that 65 cts. on the dollar would be paid back as soon as they got
184 out of Ware's presence, or got down in the town of Marion, where they all lived, thereby establishing as he, Hardin, hoped, expected, and believed, in the mind of said Ware, that county scrip was worth 75 cts. on the dollar at the time?

Answer. I knew W. S. Reid, B. S. Wing, in 1871, and knew M. H. Wing, but the year I do not remember. I never went up to Mr. Ware's with Mr. Hardin on any transaction or trade; and if the others did I do not know it, and knew nothing of the trade between Ware and Hardin until it was all made, and then I thought for the time it was made by Hodges.

I knew L. B. Hardin in his lifetime and he was more or less under the influence of W. D. Hardin, as one brother is to another. I cannot remember any scrip transaction that I had with any one in 1871, although I may have had some.

E. B. LEWIS.

Deposition of A. M. Clemment.

A. M. CLEMMENT, sworn, says:

My name is A. M. Clemment; I live in Crittenden county; my age is over fifty years; and am by occupation a farmer.

185 I knew John D. Ware in his lifetime. I have had business transactions with John D. Ware, and the first was, I sold Mr. Ware a five-dollar piece of scrip for four dollars in money, at least Mr. Woodson did it for me, and in my presence. I have had several other small transactions with him. He was feeble in body but in mind he was strong enough for anything. In my judgment I think he could not be easily taken advantage of.

Cross-examination:

Early in the spring of 1871 scrip was worth about 75 cts., near the fall of the year it went down considerably. I went to Hardin's in May, 1871. I then had $280.00 in Crittenden county scrip. In September or October in that year I sold M. H. Wing twenty-three dollars for ten dollars in currency. I did not deal in scrip. I knew L. B. Hardin. He is dead. He was my son-in-law, and at one time

he was administrator of the estate John D. Ware. Mr. W. D. Hardin had considerable influence over L. B. Hardin and at one time I saw Mr. W. D. Hardin try to stop him from running for State senator from this district. I do not know the value of one
186 half of the Ware place in 1871. I went there in May, 1871, and worked the place and give four dollars per acre to said Asa Hodges. We worked in partnership. I never made a trade with W. D. Hardin for rent of the place in my life, but always traded with Asa Hodges, who for two years after I went on the place, I supposed owned it.

A. M. CLEMENT.

Deposition of Asa Hodges.

I am above fifty years of age, of sound mind and memory. I am well acquainted with the defendants, Hardin and his wife, and know some or all the other defendants. And I know some of the complainants, if not most of them. I knew the deceased, said John D. Ware, well before his death. Our plantations joined and our residences were not more than half a mile apart, they were in sight of each other, and
187 I and said Ware were on intimate terms as neighbors for near ten years before he left Arkansas. He told me he had been an old speculator and negro trader in his time. He was a man of good sense and fair business information. In my judgment he was rather shrewd than otherwise. He provided himself on his ability to trade. He was getting a little old, but I could not see that his age impaired his trading capacity. I wanted to buy a horse from him about the time of the trade with Hardin, and he showed a good and ready judgment about the value of property.

Shortly before the trade with said Ware, [he] told me that he had failed to make money at farming, and that he needed an active young man to help him look after his plantation affairs; and just before he entered into a planting partnership with Hardin, he asked me if Hardin was such a man as he wanted. I told him that Hardin's business qualities were, in my judgment, not good as a plantation manager and farmer, but he was an excellent hand to get up hands and tenants and to keep them on the place.

He formed a plantation partnership with Hardin, and told me that he was well pleased with him.

After he had sold his place to Hardin, I asked Ware why he had sold his plantation to Hardin for county scrip.

He said he could not make any money by his farm, and the county scrip bore interest, and he thought it a good invest-
188 ment. He boasted of his trade. What he said about it he impressed me with the idea that he thought it the best trade he had ever made in his life.

He said Hardin had given him a good price in county scrip, the interest on which would bring him more actual money than the value of the crops raised on his farm, and cost him nothing like the same trouble and uncertainty.

He said he was well acquainted with the character and value of

county scrip, and that the county was rich, and under good management would pay the scrip, principal and interest, dollar for dollar, and he much preferred the scrip to his interest in the place sold to Hardin.

He said he believed he had made a good trade, and well contented and pleased with it.

At and about the date of the trade between Ware and Hardin for Ware's place, scrip was at or very near par, in paying county taxes, and sold for about sixty cents in the dollar cash.

I understood from Mr. Ware that the price Hardin had given him for his place was about $20,000 in county scrip. In my judgment the place was then worth about $7,000 in money cash down. It is now worth about $5,000 in money cash down.

189 Before Mr. Hardin made the trade he advised with me about it.

I told Hardin not to make the trade; he was giving more than twice the value of the place; at least this was my judgment. In my judgment, if Ware, or his representatives, had taken the proper course in proper time the whole amount of scrip paid by Hardin for the Ware place would have been collected, principal and interest, without the loss of a dollar.

Cross-examination:

I have been very intimate with W. D. Hardin, and he always acted a good deal under my advice.

I never had any transaction with Mr. Ware, except the purchase of some slaves, probably one or two, and his interest in a saw-mill. The statements that I have given in my examination-in-chief, as to the sale of the said land by Ware to Hardin, were made to me at Mr. Ware's house, and the statement that I made in reference to Mr. Hardin's ability was made at my own house.

I did not furnish Mr. Hardin the money to buy scrip with which to purchase the land in controversy, but I protested against

190 his foolishness in buying it, as he was paying more than its value.

I never knew nothing about the rumor or belief (if such really existed) that I, and not Hardin, was the purchaser of said lands. I never rented any of these lands. I never rented any of these lands to any one, or had any control of them in any way, nor received any rents from any one for them. The lands, on an average, were worth three dollars per acre rent; that is, the cleared lands; some years less and some more. Of the cleared lands there is about one hundred and sixty acres. At the time of the trade with Hardin Mr. Ware was about sixty years old, and perhaps a little older at the time of the trade.

Mr. Ware was not an incessant drunkard, and I never saw him out of the way from the use of whiskey or incapable of attending to business. When I was here on my place I saw him every day, sometimes twice a day. I did not see him on Sundays. Mr. Ware and I were frequently in conversation about the value of county scrip—with reference to the value of it while I was county judge; it was

then worth dollar for dollar, and he believed, and so did I, that with a good county government it would return to its face value
191 again, and he very much desired me to help him organize a good county government.

It was his annual business to buy scrip for the purpose of paying his taxes. Mr. Ware dealt in anything that he thought there was any money in, but I never knew him to buy scrip for speculation.

Mr. Hardin was not present at the time Mr. Ware had these various conversations with me in regard to the sale of the said lands to Hardin and the price of county scrip.

A. HODGES.

Deposition of W. D. Hardin.

W. D. HARDIN, a witness of lawful age, was also then and there to me produced, and, after being sworn according to law, on his oath says:

Int'y 1st. Are you acquainted with parties, or any of them, to this suit?

Ans. I know all of the defendants, and most of the plaintiffs.

Int. 2nd. Do you know the subject-matter of this suit?

Ans. I do; it is the title to the tract of land that I bought from John D. Ware, mentioned in the bill.

Int. 3rd. Did you know John D. Ware in his lifetime?
192 Ans. I did, and intimately; I lived with him and farmed with him.

Int. 4. Did you know him about the 28th day of March, 1871, and shortly before and after that date, and what was his capacity to do business and make contracts at that time?

Ans. 4. His capacity at that time was as good as any man in this county capable and superior to me; he was [a] shrewd, sharp business man, and knew exactly what he was doing when he was making a trade, and knew the value of land and county scrip as well as I did, as he and I was trading in buying tax land and dividing the same between us.

Int'y 5. Did Hardin ever pay for said lands, and to whom did he pay and what did he pay?

[Ans.] I, W. D. Hardin, paid John D. Ware ten thousand dollars in county scrip or warrants on Crittenden county in accordance with a trade that I made with him for his farm in which he gave me a title-bond for the farm, and ten thousand which was due the 1st day of Jan'y, 1872, I paid to L. B. Hardin, as administrator of the estate of John D. Ware, and then got my deed to the land, and John D. Ware gave me possession on the payment of the first
193 ten thousand dollars, and I have never got any of the scrip back, and I am still in the possession of the land or farm.

Int'y 6. How long had you been a resident of Crittenden county before the 28th March, 1871?

Ans. About six or seven years.

Int. 7. What was the character of John D. Ware in his lifetime, on or before the 28th day March, 1871?

Ans. He was an honest, straightforward, keen, shrewd, business man.

Int'y 8. How long had John D. Ware, deceased, been a resident citizen of Crittenden county, Arkansas, before the 28th day of March, 1871?

Ans. He told me when he left fourteen years.

Int'y 9. How was said John D. Ware during his residence in Crittenden Co., Ark., engaged and employed in business?

Ans. He was farming and had a saw-mill with Capt. Burkshire, in partnership with him.

Int'y 10. Look upon the instrument of writing here now presented, and marked Exhibit A X, and say whether you know the handwriting of the said Ware, and did you ever see him write, and is the signature to the same the genuine signature?

Ans. It was signed in my presence by Ware himself, and his signature is genuine, for I saw the same made by him. I saw him sign the title-bond.

194 Int'y 11. Did the said John D. Ware during his lifetime ever offer to you to return the consideration or the contract for the sale of the said land and rescind contract of said sale?

Ans. Mr. Ware never did. He said he was perfectly satisfied with the trade; that he thought the scrip and interest would enable him to live easy the balance of his life, and that he was going up home to Brownsville, Tenn., with the money in his pocket, feeling better than he had for five years, and what money I had given him and what scrip would enable him to pay his daughter's indebtedness in Brownsville.

Int'y 12. When did said W. D. Hardin take possession of said land, and how long did he hold the possession of the same?

Ans. I took possession when I paid Mr. Ware the ten thousand dollars on the day of the trade, and held the possession until 1873, when I gave it to my wife, and she and I have got possession to-day, and never have been interrupted by any of the Ware heirs.

Int. 13. When did Mr. Ware die?

Ans. Mr. Ware died about the 6th day of December, 1871, as I was at his house the next day after he died.

195 Int'y 14. Is said L. B. Hardin, whose name is signed to the contract as a witness, alive or dead; if dead, when and where did he die, and is his signature to the said contract genuine or not, and have you seen him write?

Ans. He is dead; he died at Texarkana in the month of February, 1877; his signature to the deed is genuine; I have seen him write.

Int'y 15. If you know, state the market value of county warrants or treasury notes of Crittenden county, Arkansas, on or just before the 28th day of March, 1871.

Ans. Most of the scrip that I bought and did have and paid to Mr. Ware, I paid seventy-five cents for it, and the balance was my sheriff's fees of Crittenden county.

Int'y 16. Did said plaintiffs or any of them require said Lucian B. Hardin to give an additional ——, as administrator of John D. Ware's estate?

Ans. I think they did, but the records will more fully show.

Int'y 17. Did you ever pay to the said Lucian B. Hardin the balance of the price agreed to be paid for said tract of land?

Ans. Yes, I paid the balance in county scrip, ten thousand dollars, as appears in said administrator's deed to me.

Int'y 18. Did said L. B. Hardin, as administrator, execute and deliver to you a proper deed of conveyance to the land?

196 Ans. Yes; he did execute and deliver to me a proper deed to said land, as appears from said exhibit, marked "A X," to my answer.

Cross-examination:

Int'y 1 When and where did you first become acquainted with John D. Ware, and what was his occupation at the time?

Ans. In the year 1864 or '5, in Crittenden county, Ark., around and about Marion.

Int'y 2. Between the years 1864 or '5 and 1869 did you have any transaction and dealings with the said Ware; if so, what were they?

Ans. In the latter part of the year 1868 or '9 Mr. Ware wanted some one to go into copartnership with him to farm. I went up there and saw him and went into partnership with him in the mill and farm.

Int'y 3. For the purpose of making and effecting that copartnership, did you go to see him or he come to you?

Ans. I think I went to see him after his partner, Mr. Hamilton, informed me that he wanted a partner.

Int'y 4. Were the terms of the copartnership in writing; if you exhibit here the *the* original agreement of copartnership and make the same with your name for identification, as Exhibit (3) three,

197 and say in whose handwriting the same appears, and by whom the same is witnessed; and was the same written out of or in the presence of the said Ware; and is the signature- of the attesting witnessse genuine?

Ans. Yes; the terms of the contract was in writing, and the same I here exhibit as *as* Exhibit (3), and signed by he and I. The contract is written in my own handwriting; it was witnessed by L. B. Hardin, my brother, and his signature to the same is genuine; it was written at Mr. Ware's house, on his little table, and he was present in the room at the time.

Int'y 5. How long was it after the contract had been written before it was signed by yourself and said Ware and attested by the said L. B. Hardin?

Ans. Right then and there; I read it to him carefully, and we signed it, and it was attested at the same time.

Int'y 6. You say, in answer to the 4th interrogatory, that the said contract was writ- in Mr. Ware's room and in his presence; and, in answer to the 5th interrogatory, that it was signed and attested immediately after its execution; please state now how it came that the body of the contract is written with one kind of ink and that of the signatures with another.

198 Ans. I do not know, unless there were two bottles of ink there of different sorts.

Int'y 7. Under said contract, did you bear one-half of the expense of the labor, mules, and horses for the cultivation of said farm for the year 1869; and, if so, how did you furnish it?

Ans. Yes; I did furnish one-half of the proceeds it required to to run the place, and more, too.

Int'y 8. Was there any loss agriculturally on said place during said year?

Ans. Yes; a heavy loss to both of us on the mill; the militia took a great many of Mr. Ware's mules and used a good deal of his corn and fodder, took all his meat and the most of his household and kitchen furniture early in the spring 12 or 1,400 bushels of corn burnt up in broad daylight, then by leaving us without a single bushel of corn or a pound of meat. I, being sheriff of Crittenden county, had a plenty of money; I furnished more than my part during the year.

Mr. Ware often asked me to pay and buy things, saying that he did not want to go to town and get the money; that it might finally emqarrass him more than he would like to be, and that he would settle up at the end of the year. At the end of the year most
199 of the cotton was shipped to Memphis to Mr. Ware's merchant and to his credit; and, in fact, most all of the cotton, saving a few bales. I think his merchant's name was Howell, or the firm of Farrington and Howell, and I had no settlement with Mr. Ware, but afterwards I did have a settlement with the administrator, L. B. Hardin, of his estate.

Int'y 9. Please, in dollars and cents, aggregate as nearly as you can the amount of the loss sustained by J. D. Ware by reason of the circumstances and things nar-ated by you in your answer to interrogatory 8.

Ans. Thirty-nine hundred and some odd dollars by depredation from the malitia, and a dollar or a dollar and twenty-five cents a bushel for the corn (about 1,200 bushels).

Int'y 10. Please aggregate in dollars and cents, as near as you can, the amount furnished by you for the proper conduct of said farm for said year, according to contract aforesaid, and was the same furnished through any merchant; if so, whom?

Ans. It has been so long since that I have forgotten. I paid the cash out of my pocket for day hands. I don't know. E. M. Apperson & Co. was my merchants to some extent. I do not think
200 I did keep a separate account with them between Ware and myself.

Int'y 11. State how many bales of cotton and how many bushels of corn was raised upon said place during said year under said contract, and how was the same divided, if at all, and what became of it.

Ans. I remember of about 30 or 40 bales. Nearly all of it was shipped to Mr. Ware's merchant, saving 7 or 8 bales, which was shipped to mine, Messrs. E. M. Apperson & Co.; it being a bad year, and I do not think we made any corn, and not enough to

feed until Christmas; and so well as I can remember, I think I bought corn before January. I was not farming anywhere else during that year.

Int'y 12. Where did you live during that year, at what place did you stop, what was your business or occupation, where was the said Ware at that time, and what did he do?

Ans. I was sheriff of Crittenden county, and boarded with Mr. Ware, and attended to the business of the farm. Mr. Ware was there all the time and done nothing.

Int'y 13. State, if you please, how many bales of cotton and how many bushels of corn was raised on the Ware place in 1869,
201 under your partnership with him, Ware, for that year; what became of it, to whom was it shipped or sold? State fully.

Ans. I think there was about 30 or 35 bales of cotton raised, 100 or 200 bushels of corn, as well as I can remember. Mr. Ware shipped most of the cotton, I think, to Farrington and Howell; what part I shipped was to E. M. Apperson & Co. I don't think as much as ten bales, though their books will show more fully; it has been so long I have almost forgotten. The corn was used on the place.

Int'y 14. Please state whether or not at the end of the year 1869, at any time during the year 1870 or during the year 1871, up to March the 28th, or soon thereafter, you made any sort or kind of trade with John D. Ware by which you secured unto yourself Ware's one-half of all of the personal property of the said Ware on the said place, if so, state the terms of the said trade or purchase and say when or how you paid said Ware therefor.

Ans. In 1871 I purchased by warranty deed from J. D. Ware his, Ware's, interest in Crittenden county real estate, and his stock and personal property on the place, except his trunk and wearing apparel, and have a bill of sale therefor, a copy of which I hereto
202 attach, marked Exhibit "R," endorsed W. D. Hardin, for identification.

Int'y 15. State whether or not you ever stated, at any time or at any place, to C. C. Batch, or in his presence or hearing, since the death of the said J. D. Ware, or since the date of your said trade with the said Ware, that you owed the said Ware for his personal property, and say whether you —— the said C. C. Balch or not.

Ans. If I ever said a word to Mr. Batch, I don't remember about the transaction; but I did pay the said Ware every cent that I owed him before he left here for his personal property cash, possibly some of it was paid in Memphis, on his way home.

Int'y 16. When J. D. Ware left Crittenden county, Arkansas, after having made this trade with you to which you testify, for his home in Brownsville, Tenn., did you go with him there?

Ans. I did.

Int'y 17. When in Brownsville, Tennessee, on said trip did you have a conversation or settlement or understanding with the said Ware in his, Ware's, house as to your and his Arkansas transactions; and, if so, what was the result of said conversation, settlement, or understanding, and who was present, if any one, at the time?

203 Ans. I purchased all the household and kitchen furniture

that he had and stock; on the way from here there, or probably at his home, said Ware said he had forgot to reserve Willie's gun, and said he did not see how he could do without his horse and saddle, and he would like for me to let him have them, and that it would be very convenient for his daughter and him during the summer to have his fine horse and saddle up there; I told him that I would let him have his horse, saddle, bridle, and gun for $250; he said al- right, he would send after them, and he would settle up satisfactory when he came back in 1872 to get the balance of the purchase-money due on the land in one final settlement; just before I left he said he would like for me to give him that fine lounge of mine, that it would be nice for him to lay on during the summer—the one that I had bought in Memphis, and gave $40 for, all of which I bundled up and sent to him; this is the very conversation that I had with him that I remember of about matters of business; and I do not remember who was present.

204 Int'y 18. Is it not a fact that while in Brownsville on said trip you had a conversation with the said J. D. Ware, now deceased, in regard to your Arkansas transactions in the presence of Emma Ware, a daughter of J. D. Ware, in which the whole matter of trades and transactions were discussed, and that you promised to return to Brownsville within one week or other short time and pay him, said Ware, a large sum of money on account of sale of stock, personal property, and farming transactions which you admitted that you then owed him?

Ans. Mr. Ware and I may have had a conversation before Miss Emma, but I do not remember any such conversation at all; but I had paid him for his personal property in full, and could not have had any such conversation, because the balance of the purchase-money was not due on the land until after January, 1872; and if Miss Emma understood so, she was mistaken and misconstrued the conversation.

Int'y 19. Did you return to Brownsville after the date of your visit thereto at any time before the death of the said Ware?

Ans. I did not; but I was there in Brownsville a day or two after he died; I went then to get a deed to my land and pay the balance of the purchase-money due on the land, not knowing that he was sick or dead; he died early in December, A. D. 1871.

205 Int'y 20. Upon this visit to Brownsville did you see or converse with any members of his, Ware's, family; state the nature of your business or visit; if so, which of them?

Ans. I don't think I talked with any of them about anything, as well as I can remember. I merely went into the house; saw Mr. Ware was dead. I left—went down town, and then came home.

Int'y 21. State, as near as you can now remember, the month, the date of the month, and year that you went with the said Ware from Ark. to his house in Brownsville, Tennessee, and say whether after that time you ever saw the said Ware alive.

Ans. I went with him in the latter part of the month of June, in the year 1871, to Brownsville, when I left there, which was the last time I ever saw him alive.

Int'y 22. Upon your return home to Arkansas after your visit to Brownsville in month of December, A. D. 1871, how long was it before your brother, L. B. Hardin, applied and did become the administrator [of] the estate of the said Ware in Arkansas; was his application of his own volition or upon your solicitation?

Ans. The papers will more fully show; as it has been so long I cannot remember.

Int'y 23. Did you know about this time one Chas. W.
206 Bryant; was not his profession that of an attorney; was not he employed by you as an attorney to do the legal business of the said estate for your bro., the said L. B. Hardin, as said administrator, and are not all or a principal part of the orders relative to the administration of the said estate upon Probate Record (D), now here shown you, in the handwriting of the said Bryant?

Ans. I knew C. W. Bryant; he was my lawyer, and advised and arranged all my matters in the Ware's business and administration. I've forgotten whether I employed Mr. Bryant for my brother or not, but he was my *my* lawyer, and I wanted him to keep all my matters straight in the Ware's administration, and I depended on him solely for all the business to be kept right.

The orders found in record-book "D," as here shown me, all appear in the handwriting of the said C. W. Bryant, but this is not unusual in the practice of the court, and these orders are all approved by the probate judge, Thomas L. Dougherty, in manner and form as required by law.

Int'y 24. Look upon Probate Record "D," between pages 408 and 409, and say in whose handwriting the three half sheets of
207 letter paper appears, how and in what manner the same so there appears, why were said half sheets pasted between said pages, and why was not said purported order in the matter of the J. D. Ware estate entered at length upon the record?

Ans. They look like C. W. Bryant's handwriting. I do not know why they were pasted between said pages. Bryant was my lawyer, and told me everything was right in all the case, and I paid no attention to it myself, but depended upon him. I mean the administration of the Ware estate. I do not know why said orders were not entered at full length upon the record. The order is signed by Thos. L. Dougherty, probate judge of said county.

Int'y 25. Look upon Probate Record "D," page 438, and say what was the nature and character of the account exhibited by you against the estate of the said Ware, and by the court allowed, and classed in the 5th class, for the sum of two thousand three hundred and thirty-three dollars and 65 cents ($2,333.65). State fully as to the items of said account, and, if you have a copy thereof, exhibit the same with your deposition.

Ans. It has been so long that I have almost forgotten, but,
208 to the best of my knowledge, it was the money that I spent while he and I was farming together, for supplies and paying hands, and that I had loaned Mr. Ware, and for a horse, saddle, bridle, and gun, a part of the Cunningham note, collected by C. W. Bryant, as attorney, and transferred to me by C. W. Bryant, and the

biggest portion of the cotton shipped by J. D. Ware of crop of 1869 to Farrington and Howell to his credit. My memory don't enable me to make a more accurate statement of the items. At the time the account was made out it was correct, and approved by the court. I have no copy, and my recollection will not enable me to make one.

Int'y 26. Look upon Probate Record "D," page 522, now here shown you, and say in whose handwriting the order in the Ware estate, discharging your brother, as administrator, and his securities, appear.

Ans. I don't particularly know.

Int'y 27. Whose handwriting is said order, to the best of your knowledge and belief?

Ans. It looks to me like Rees Davis' handwriting.

Int'y 28. State whether or not you was ever the clerk of the circuit and all of the courts of Crittenden county, Arkansas. If so, at what time did your official cares commence, and when did it end, and were you, during that time, the custodian and keeper of the records and papers of said court, and state who were your deputies, giving the time of the beginning and ending of each, if more than one.

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Ans. I was clerk of all the courts of said county from January, 1872, until January, 1874, and I discharged my duties as such clerk fairly and faithfully, to the best of my ability; Rees Davis and R. L. Hardin were my deputies, and as far as I know my deputies did the same.

Int'y 29. State at what time, under what circumstances, what place, and who was present at the time you claimed to have paid L. B. Hardin, adm'r of Ware's estate, the sum of ten thousand dollars in Crittenden county scrip, as the balance of the purchase money due from you on said land to said Ware, and what was the price of scrip at that time; did you take a receipt from the said administrator for said scrip; if so, exhibit the same with your deposition.

Ans. I paid it some *some*time in Jan'y, 1872, in Marion; Thos. L. Daugherty was present; they counted it and said it was all right, and thereupon gave me a deed, and the deed was the only receipt that I taken for the money; and the price of county scrip at that time I can't remember, but think it was 60 or 70 cents; this payment was not made to the administrator in open court.

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Re-examination:

Int'y 1. Are you well or ill acquainted with the document filed in your cross-examination and marked Exhibit "A," and endorsed by you with your name for indentification, here now shown to you?

Ans. Yes; I am well acquainted with it.

Int'y 2. For what purpose was it made, and in whose handwriting is it?

Ans. It was made at my suggestion, by Judge Peters, and it is in his handwrite, and is used by me to refresh my memory.

Int'y 3. Are the facts and matters therein mentioned true and fairly stated?

Ans. They are true and fairly stated.

W. D. HARDIN.

211 EXHIBIT "A. X.," TO W. D. HARDIN'S DEPOSITION.

STATE OF ARKANSAS, *Crittenden County:*

Know all men by these presents that I, John D. Ware, of the county of Crittenden, State of Arkansas, am held and firmly bound unto Wm. D. Hardin, county and State aforesaid, in the sum of twenty thousand dollars.

Sealed with my seal, this twenty-eighth day of March, A. D. 1871.

JOHN D. WARE. [SEAL.]

The condition of the above obligation is such that the above bounden John D. Ware, has this day sold to the said William D. Hardin all the following-described lots or parcels of land, to wit:

The southwest quarter of section twenty-two and the northwest quarter of section twenty-seven, containing three hundred and twenty acres, upon which there is a brick dwelling and other outhouses, also the north fractional half of section twenty-eight, containing one hundred and ninety acres, (the same more or less,)

212 also the east half of the west, the west half of section fifteen, containing one hundred and sixty acres, also the east half of the southwest quarter of section ten, also an undivided interest containing one hundred and fifty-five $\frac{2}{100}$ acres of a Spanish grant or confirmation in the name of Augustus Gonzsee, No. 2931, lying on both sides of the Military road and on both sides of Fifteen-Mile Bayou, and mostly in section twenty-eight, and known as the Mill Seat Bayou tract, or the Berry Anthony tract of land for three hundred and twenty arpens, or two hundred and seventy-two $\frac{2}{100}$ acres. The northeast fractional quarter of section twenty-nine, lying north of lake, containing one hundred and thirty acres, said lands all lying in township seven north, of range eight east, containing in all about one thousand and fifty-three $\frac{3}{1}\frac{4}{0}\frac{0}{0}$ acres, lying and being situated in Crittenden county, Arkansas, and the said John D. Ware has this day granted, bargained, and sold the lands aforesaid to the said W. D. Hardin, and his heirs and legal representatives forever, for the sum of twenty-thousand dollars to be paid in the manner following:

Ten thousand dollars is to — paid upon the delivering of these

213 presents, the receipt whereof is hereby acknowledged, and the said W. D. Hardin and his legal representatives forever released from the payment thereof, and ten thousand dollars in Critten county scrip, or treasury orders, on the 1st day of January, A. D. 1872.

Upon the payment of the sums aforesaid being made, the said John D. Ware for himself and his legal representatives doth covenant and agree to and with the said W. D. Hardin and his legal representatives to execute a good and sufficient deed of conveyance, conveying to the said W. D. Hardin and his legal representatives the lands aforesaid and all fixtures and appurtenances, rights and privileges thereto belonging, with full and general warranty and

covenants for all the right, title and interest of the said John D. Ware in — to the lands aforesaid, the same being an undivided half, said lands and interest after accruing.

Now, this instrument further witnesseth, that if the said John D. Ware shall fail to make the deed aforesaid according to the conditions of the bond above written, then for the better securing of the said W. D. Hardin for the sum of ten thousand dollars, this
214 day paid to the said John D. Ware, according — the terms of the above instrument, hath granted, bargained and sold the lands before described to the said W. D. Hardin and his legal representatives all the following described lands, lying and being situated in Crittenden county, Arks.:

The S. W. $\frac{1}{4}$ of section 22 and the N. W. $\frac{1}{4}$ of section 27, containing 320 acres. Also the north fractional half of section twenty-eight, containing one hundred and ninety acres, more or less. Also the E. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of section 15, containing 160 acres; also the E. $\frac{1}{2}$ of S. W. of section 10. Also an undivided interest containing $155\frac{220}{100}$ acres of a Spanish grant in the name of Augustus Conzee, No. 2931, lying on both sides of the military road, and on both sides of Fifteen Mile Bayon. The N. E. fractional quarter of section 29, containing one hundred and thirty acres, all lying in township 7 N., range 8 east, containing about $1,053\frac{34}{100}$ acres, and the said John D. Ware doth covenant for himself and legal representatives to and with W. D. Hardin that, in case the deeds of conveyance are not made, that the said sum of ten thousand is a lien and encumbrance upon all the lands mentioned in this mortgage,
215 and all the lands described in the conditions of the foregoing bond.

To have and to hold the same, together with all the tenements and appurtenances thereto in anywise belonging, according to condition of the above bond, and for the security of the said sum of ten thousand dollars, if the said John D. Ware, or his legal reprentatives, should fail to make the conveyance aforesaid according to conditions aforesaid.

In testimony whereof, I have hereunto to set my hand [and] seal, this 28th day of March, 1871.

JOHN D. WARE. [SEAL.]

Witness:
C. W. BRYANT.

STATE OF ARKANSAS, *Crittenden County:*

I, Thomas L. Dougherty, probate judge in and for Crittenden county, Arkansas, by authority vested in me to take acknowledgements of instruments of conveyance, do certify that John D. Ware, whose own proper signature is annexed to the foregoing instrument, and who is to me personally known, appeared before me this —
216 day, in person, and acknowledge that he executed the foregoing instrument for the several considerations and purposes therein contained, and that the same was his free act and deed.

Given under my hand and seal, this twenty-eight- day of March, 1871.

[L S.] THOS. L. DOUGHERTY,
Probate & County Judge.

STATE OF ARKANSAS, } ss:
County of Crittenden, }

I, John Swepston, clerk of the circuit court and *ex-officio* recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office at — o'clock — minutes — m., on the 28 day of April, A. D, 1871, and the same is now duly recorded in "Record Book M," page 598, 599, & 600.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 21 day of June, 1871.

[SEAL.] JOHN SWEPSTON,
Clerk & Recorder.

Endorsed: Filed April 28th, 1871, for record. John Swepston, clerk & recorder. Recorded in Book M, pages 598, 599, & 600.

217 EXHIBIT "W" to W. D. HARDIN'S DEPOSTION.

1. Ans. to inter. 1. I know the defendants; I am one of them, and my wife, Lida C. Hardin, is another; I know the Murrys, the other defendants.

2. Ans. to inter. 2. The matter in suit is the title of said John D. Ware, deceased, or his heirs or representatives, to the lands named in the plaintiff's bill in this case; so I understand it.

3. Ans. to inter. 3. I knew said John D. Ware, deceased, in his life very well; we were engaged in farming together on the lands in controversy in the year 1869; I knew him perfectly well; transacted much business with him. At the date of said contract maked Exhibit "A X" to my answer to the bill in this case, that is to say, on March 28, 1871, and before and after, till he left Crittenden Co., Ark., and at the date of said contract, he was perfectly capable and capacitated in mind and body to make the same. He was not influenced in the slightest by me in making the same, but he acted on full knowledge of all the facts and of his own free will and
218 accord, and he was not influenced by me in anywise whatever touching the same, and said contract was conceived and executed by me in the utmost good faith towards said Ware and all others.

4. Ans. to inter. 4. I perfectly well knew said Ware on the 28th day of March, 1871, the date of said contract of sale of said lands, as shown in said Exhibit "A X," and before and after that date, and he was perfectly capacitated and capable in mind, and the same was made and executed by him and the said conveyance delivered to me by him of his own free will and accord, and wholly without any fraud, imposition, undue influence, or improper conduct on my part. I acted in the whole matter in the utmost good faith and

fairness towards said Ware throughout, and not otherwise in any respect whatever, and all charges and statements in plaintiff's bill in this case against me of fraud and improper conduct in the matter are utterly false and untrue in every particular. The said conveyance "A X" remains just as it was made by said Ware and delivered by him to me, and the same is valid and binding and not
219 otherwise. I had done business with said Ware, and he was an intelligent, shrewd, and wide-awake and experienced business man and perfectly competent.

5. Ans. to inter. 5. I was the purchaser, and the contract was made with me, and Ware's confessions are embodied in said contract "A. X." and the same was executed as it appears to be.

6. Ans. to inter. 6. Between six and seven years; not so long as Ware.

7. Ans. to inter. 7 He was formerly a successful negro trader and speculator, and had the character of being a shrewd and intelligent trader and man of business.

8. Ans. to inter. 8. Some ten years and more. He came there before I did.

9. Ans. to inter. 9. So far as I know, he was engaged principally in running a steam saw mill with Capt. Berkshire.

10. Ans. to inter. 10. It was signed in my presence by Ware himself, and his signature is genuine. I saw the signature made by him.

11. Ans. to inter. 11. He never did so long as he remained in Crittenden Co., Ark. He was perfectly well satisfied with the trade, so far as I know.

12. Ans. to inter. 12. He took possession of said lands on or about March 28th, 1871. Said Ware put him in possession at once,
220 under said contract of sale of March 28, 1871, (said "Exhibit A X,") and he and his said wife, Lida C. Hardin, has had constant, uninterrupted, adverse possession of all said lands ever since, hitherto, and said Lida so now holds possession thereof, and claims the same as her own and her children's property under my deed to her and them.

13. Ans. to inter. 13. He is reported to have died at the time and place stated in plaintiff's bill in this case. I am informed this is correct.

14. Ans. to inter. 14. Said L. B. Hardin is dead. He died at Texarkana, Texas. He was my brother. His signature to said contract is genuine. I have often seen him write, and know his handwriting well.

15. Ans. to inter. 15. The market values were often variable. At the time referred to they were worth in the market about seventy-five cents in the dollar. They afterwards became worth one hundred cents in the dollar—some time in the year 1872.

16. Ans. to inter. 16. Said Ware had been many years farming in said county of Crittenden, and had good knowledge of the lands in the county; quite as much as I did.

17. Ans. to inter. 17. Said plaintiffs had full knowledge of
221 all the matters stated in their bill from the death of said

Ware. They once filed a bill in the chancery court of said county of Crittenden for the same. It is lost from the records of said court, and cannot be produced. They suffered the same in 1876 to be dismissed without paying cost to be dismissed, and never renewed it. This was done in the year 1876—this was not long after said Ware died—and was approved by the court.

18. Ans. to inter. 18. They did. And he did give such additional bond, and the bond was good at that time.

19. Ans. to inter. 19. He did, as appears in and by said Lucian B. Hardin's deed, as administrator of the estate of said John D. Ware, dec'd, bearing date January 23, 1872, and which is filed as exhibit to my answer to plaintiffs bill in this case, marked "Exhibit B Y," to said answer. The whole balance of the price of said lands was then paid, and said deed was made and delivered to this deponent under order of said probate court.

20. Ans. to inter. 20. Said Lucian B. Hardin, as such administrator, did execute and deliver to me a proper deed for said Ware's interest in said lands under order of said probate court, as
222 appears in and by the record of the proceedings of said probate court, and said Exhibit "B Y" to my said answer to said plaintiffs said bill in this case, which is here now referred to as part of this answer, and prayed to be so taken and considered by the court in this case as such.

21. Ans. to inter. 21. The contract for sale of the said lands of March 28, 1871, marked Exhibit "A X" above, was a proposition of said John D. Ware, in his lifetime, to me, and not mine to him. He proposed to sell the whole tract to me for $20,000, to be paid in the manner and on conditions named in said contract. I at first did not wish to buy, but he pressed the trade, and it was finally agreed upon, executed as it appears in said "Exhibit A X," above referred to. And Ware was as well acquainted with the market value of said county warrants as I was, and better, and the amount paid was fully worth the lands, and more, to-, and all charges in the said bill to the contrary are wholly and utterly false. And it is false that I did not pay the full consideration for said lands, as stated in said contract, as therein shown and stated, but I did. When I was courting my present wife, said Lida C. Hardin, I told her if
223 she would marry me that I had a good home, and would settle it on her after our marriage, and upon this promise she married me, and after I was married I conveyed said lands to her in performance and execution of said promise. And deeds of 1873 and of July, 1877, are founded on this consideration, and are valid.

EXHIBIT 3 TO W. D. HARDIN'S DEPOSITION.

This indenture, made and entered into on the 17th day of January, 1869, between Jack D. Ware, of Crittenden county and State of Arkansas, of the first part, and William D. Hardin, of said county and State, of the second part—

Witnesseth, That John D. Ware, of the first part, agrees to furnish land and all farming utensils that are now his place, also two wag-

ons and two yoke of oxen; also all corn and hogs on his place are to remain and be used on the place during the year of 1869; said Ware also agrees to furnish half of the stock to cultivate the land,
224 that being three hundred acres, more or less, and half of all other expenses for cultivating said farm; also to furnish all corn for making the crop, but all corn used is to be replaced by said Ware and Hardin equally.

William D. Hardin, of the 2nd part, agrees to be business manager and superintendent of said place or farm for the year of 1869, that is, the farm known as the Ware farm, situated on the military road, about 2 miles west of Marion; also agrees to bear half of the expense of the labor and mules or horses to cultivate said farm.

We, Ware and Hardin, also agrees to share equally the loss and gain of said farm.

If any of the stock of said farm either die or be stolen or strayed, we, Ware and Hardin, agrees to bear equal loss, and at the close of 1869 all stock to be equally divided.

JOHN D. WARE. [SEAL.]
WILLIAM D. HARDIN. [SEAL.]

Witness: L. B. HARDIN.

225 EXHIBIT "R" TO W. D. HARDIN'S DEPOSITION.

MAY 6TH, 1871.

Received of W. D. Hardin thirteen hundred and eighty dollars, in part payment of all my personal property, including household and kitchen furniture, and all my stock, mules, and cattle, cows and hogs, and everything on my place.

JOHN D. WARE.

$620. WARE PLACE, *June 20th*, 1871.

One day after date I promise to pay J. D. Ware six hundred and twenty [dollars], for value received of him.

And on December 5, 1883, as follows:

226 BLAND P. BOYD, as Administrator of the Estate of John D. Ware, deceased; J. L. Lett & Mary N. Lett, his wife; Thomas Klyce & Maggie Klyce, his wife, and Emma Ware

v.

WILLIAM D. HARDIN & LIDA C. HARDIN, his wife; JOHN MURRY and JAMES MURRY.

Now on this day come the said plaintiffs, by U. M. & G. B. Rose, their solicitors, and also come said defendants, by O. P. Lyles and Thomas N. Peters, their solicitors, and this cause came on for final hearing, and after the reading of the evidence the plaintiffs asked leave to amend the prayer of their bill by inserting therein the following words: "Or if thought proper that the court may give a decree for purchase-money due on said lands, and that the plaintiffs be decreed to have a lien on said lands for the payment thereof, and that said lien be foreclosed." Which amendment the court permitted to be

made; to which ruling the defendants excepted. And thereupon the court having heard all of the evidence and argument of counsel, and being fully advised as to the proper decree to be rendered herein, is
of opinion that the defendant, William D. Hardin, is in-
227 debted unto the plaintiff, Bland P. Boyd, as administrator of
the estate of John D. Ware, deceased, in the sum of seventeen thousand one hundred and fifty dollars, due for the purchase-money of an undivided half of the following lands lying in Crittenden county, in the eastern district of Arkansas—

That is to say: The southwest quarter of section 22, and the northwest quarter of section 27, containing three hundred and twenty acres; the north fractional half of section 28, containing one hundred and ninety acres, more or less; the east half of the west half of section 15, containing one hundred aud sixty acres; the east half of the southwest quarter of section 10; also an undivided interest containing one hundred and fifty-five and twenty-two one hundredths acres of a Spanish grant or confirmation in the name of Augustus Gonzsee, No. 2931, lying on both sides of the military road and on both sides of Fifteen-Mile Bayou, and mostly in section 28, and known as the Mill Seat Bayou or the Berry Anthony tract of land, for three hundred and twenty arpents or two hundred and seventy-two acres; the northeast fractional quarter of section 29, lying north
of lake, containing one hundred and thirty acres, said lands all
228 lying in township seven (7) north, of range eight (8) west, containing in all about ten hundred and fifty-three and thirty-four one-hundredths acres. And it is now ordered, considered, and decreed that the said plaintiffs have a lien on said undivided half of said lands for the payment of said purchase-money, which lien relates back to the 28th day of March, 1871; and it is further decreed that the deed from Lucian B. Hardin, as administrator of John D. Ware, to William D. Hardin, and the deed from said William D. Hardin to Lydia Hardin, conveying said lands, be, and the same are, cancelled for fraud; and it is further decreed that the said defendant, William D. Hardin, pay all the costs of this suit; and that unless said sum of seventeen thousand one hundred and fifty dollars ($17,150.00) be paid here into court within sixty days after the presenting here in court the deed of said plaintiffs hereinafter mentioned, said undivided half of said lands be sold in a body, in front of the post office, in the city of Little Rock, between the hours of ten in the morning and three in the afternoon on some day to be
fixed by the commissioner herein named, on a credit of three
229 months, bond and approved security being required of the
purchaser; and a lien being retained on the land for the payment of the purchase-money, notice for at least twenty days being first given in some newspaper published in the said city of the time and place of said sale; and the money bid for said lands by the purchaser thereof shall be paid into the registry of this court; and the court refuses to render any personal decree against said William D. Hardin herein for said purchase-money, the same being barred by the statute of limitations.

It is ordered and decreed that no sale shall take place *place* under

this decree until said J. L. Lett, and Mary N. Lett, his wife; J. P. Moses and Sue Moses, his wife; Thomas Klyce and Maggie Klyce, his wife, and Emma Ware shall execute and bring into court their warranty deed conveying said undivided half of said lands to said William D. Hardin, to be delivered unto him on payment of said sum herein decreed to said Boyd, as administrator aforesaid, and not until sixty days thereafter; and said plaintiffs are allowed sixty days from this date to execute said deed and to bring the same here into court, in accordance with the terms of this decree, and
230 this cause is reserved for further directions.

And C. P. Redmond, Esq., is appointed a commissioner to carry this decree into effect, and he shall report all his proceedings herein to this court; and said defendant, William D. Hardin, prays an appeal herein to the Supreme Court of the United States, which is granted, and the penalty of the supersedeas bond in this cause is by the court fixed at six thousand five hundred dollars; and said plaintiffs also prayed an appeal to the Supreme Court of the United States, which is granted.

And on December 22, 1883, as follows:

BLAND P. BOYD *et al. v.* WM. D. HARDIN *et al.*

Now on this day come said plaintiffs, by U. M. & G. B. Rose, Esqs., their solicitors, and deposit in court a deed executed by said plaintiffs to said W. D. Hardin, in accordance with the requirements of the the final decree in this cause; and it is now by the court ordered, considered, and decreed that said final decree be made absolute.
231 And on February 7, 1884, as follows:

BLAND P. BOYD *et al. v.* WM. D. HARDIN *et al.*

Come the complainants, by U. M. & G. B. Rose, Esqs., their solicitors, and come the defendants, by Peters, Lyles, and Harris, Esqs., their solicitors, and the court being now well and sufficiently advised of the matters arising on defendants' petition and motion for rehearing, considers that the same be overruled, to which ruling the defendants except, and, on motion, leave is granted the defendants to withdraw the original records and papers filed as exhibits to the petition for rehearing upon filing copies of same.

The evidences introduced on the motion for rehearing are as follows:

Motion for Rehearing.

In the Circuit Court of the United States, at Little Rock, Arkansas.
In Equity.

BLAND P. BOYD, as Adm'r of Est. of John D. Ware, dec'd, *et als.*, Compl'ts,
vs.
WILLIAM D. HARDIN *et als.*, Def'ts.

232 The defendants moves the court to open the decree in this cause, and to grant a rehearing, for the following reasons, to wit:

1st. Because at the time of the hearing all the original papers in

the certain suit in equity in Crittenden county, in case of Bland P. Boyd *et als. v.* L. B. Hardin, were lost, and could not be found, but have all been found since the hearing, and can now be produced.

By which papers and the record entries made thereon it doth appear that the ten thousand dollars Crittenden county scrip warrants was in fact and in truth paid by Wm. D. Hardin to the administrator, L. B. Hardin, and that the complainants, Bland P. Boyd *et als.*, brought suit in chancery to remove the said L. B. Hardin from the administration, and actually obtained an injunction against L. B. Hardin; and that afterwards the injunction was modified, allowing L. B. Hardin to proceed with the administration, and allowing him, as such administrator, to sell the county warrants, but he was not allowed to make any improper disposition of the warrants
233 until the further order of the court; and that afterward the injunction was by the court fully dissolved, and so the defendants say that the question of whether or not the $10,000.00 was paid, and the right of the administrator, L. B. Hardin, to sell the same has been fully adjudicated.

2d. Because the newly discovered probate papers show payment of the $10,000, and also show the items and proof of the correctness of the said William D. Hardin against the estate of John D. Ware, deceased, for the twenty-three hundred and odd dollars.

3d. Because the decree of the court was founded mainly on the proposition that the $10,000.00 had in fact not been paid, and that the account of Hardin was a trumped-up fraud.

4th. Because this evidence could not be had at the time of the hearing, or, at least, the clerk of Crittenden county and custodian of these papers certified that they could not be found, which being untrue in fact has greatly prejudiced defendants.

This defendant will, if need be, produce before your honor all the original papers, including the inventory of L. B. Hardin, and showing the $10,000.00 rec'd.

234 And also showing that the said claim of Wm. D. Hardin was allowed within the knowledge of the complainants, Bland P. Boyd *et als.*, and that they neglected and refused to avail themselves of their only remedy, an appeal, and the allowance thereof is now, in the form of a judgment against said estate, unappealed from and in full force and effect, and can only be reached for fraud, the negative of which defendant now proves by said papers.

Wherefore, &c.

PETERS, LYLES, HARRIS & RAY,
For Defendants.

Defendant, Wm. D. Hardin, and wife state further that when the division of said Ware land was made under the order of this hon. court, he, the said Wm. D. Hardin, paid $1,100.00 difference between the north half (the Ware half) and the Peckell half, and ought, in equity, to be credited by that amount, even if the court permits the present decree to stand.

And these defendants also state and show that in this hon. court, in case of Kavanah Hayes *v.* A. M. Clements *et al.*, No. 18, in

235 equity, the title of John D. Ware to eighty acres of said land wholly failed, and Mrs. L. C. Hardin was forced to buy the same at at least the gross sum of $——, which ought to be a credit on the present decree.

Wherefore, &c.

PETERS, LYLES, HARRIS & RAY.
W. D. HARDIN.

STATE OF TENNESSEE, *County of Shelby:*

I do swear that I believe the statements of the foregoing motion are true.

Sworn & subscribed before me, 31 day of Dec., 1883.

[L. S.] J. E. R. RAY,
Commissioner for Ark.

Endorsed: Filed Feb'y 7, '84. Ralph L. Goodrich, clerk. Bill in equity.

236 *Complaint.*

Crittenden Circuit Court. In Equity.

JOHN J. WARE, MARIA D. WARE, JOSEPH LETT & WIFE, MARY, formerly Mary Ware; James Moses & wife, Susan, formerly Susan Ware; Emma Ware, Margaret Ware, and William Ware; the last two, being infant, and have no legal guardian, sue by their brother, as next friend, John J. Ware, Plaintiffs,

against

L. B. HARDIN, Defendant.

1st. The plaintiffs above recited state that they are citizens of the city of Brownsville and State of Tennessee, excepting Joseph Lett and wife, who are citizens of the city of St. Louis and State of Missouri.

2nd. That they are the heirs-at-law of John D. Ware, who departed this life on the 5th day of December, A. D. 1871, being then a citizen of Haywood county and State of Tennessee, leaving the plaintiffs herein his only legal heirs and representatives of his estate.

3rd. That the said John D. Ware died without making a will or testament, but leaving a large amount of property, both real
237 and personal, in the States of Tennessee and Arkansas.

4th. That as soon as practicable after the death of their ancestor these plaintiffs petitioned one B. P. Boyd to become the administrator of their father's estate, and he, the said B. P. Boyd, consenting so to act as such administrator, was duly appointed as such administrator by the county court of said Haywood county, and State of Tennessee, at the January term for 1872, and thereupon entered upon *upon* the discharge of his duties as such administrator, and he is acting as such administrator of the said estate of the said John D. Ware, deceased.

5th. That soon after the appointment of the said Boyd as such administrator, as above recited, he, the said Boyd, together with one of these plaintiffs, to wit, John J. Ware, came to Crittenden county,

Arkansas, to look after the interest of the estate of the said John D. Ware, deceased, in the said Crittenden county, and State of Arkansas, and to settle the business of said estate, and to have a good and proper administrator appointed in said county and State, if necessary, but found, much to their surprise, that on the 23rd day of December, 1871, the honorable the probate court of said Crittenden county had granted letters of administration upon the said estate of the said John D. Ware, deceased, in said county to one L. B. Hardin, defendant herein, said appointment of the said L. B. Hardin having been made as such adm'r within (17) seventeen days after the death of the said John D. Ware. A copy of the said letters of administration to the said L. B. Hardin as such administrator on the estate of the said John D. Ware, deceased, together with a copy of his, L. B. Hardin's, bond as such administrator and the order of the honorable the court of probate in and for said Crittenden county approving said bond, are herewith filed and marked Exhibits 1, 2, 3, and prayed to be made a part of this bill.

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6. That the said John J. Ware, one of the plaintiffs herein, and an heir-at-law of the said John D. Ware, deceased, with the aforementioned B. P. Boyd, administrator of the estate of the said John D. Ware in the State of Tennessee, applied to the said L. B. Hardin to resign his said administration of the said estate, they, the said John J. Ware and B. P. Boyd claiming that his letters of administration had been improperly granted to him, the said L. B. Hardin, within less than thirty days from the death of the said intestate, John D. Ware, which time the law allows the-heirs-at law of the estate of deceased persons to apply for letters of administration, upon such estates. But the said L. B. Hardin, as such adm'r, did positively and persistently refuse to resign said administration, but continued, and still continues, to act as such administrator of the estate of the said John D. Ware, deceased, as these plaitiffs charge, without right.

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7. That they, the said John J. Ware and B. P. Boyd, applied to the honorable the probate court of Crittenden county, by motion, asking that the aforesaid letters of administration granted to the L. B. Hardin, as administrator of the estate of the said John D. Ware, deceased, might be revoked, and the said L. B. Hardin removed from his said administration, which motion was by the said honorable court overruled, and their prayer denied.

8. That these plaintiffs are informed and believed that a separate administration for the estate of the said John D. Ware, deceased, for Arkansas was unnecessary, and that the affairs of said estate could have been satisfactorily settled and wound up without the additional costs and expense of said administration.

240

9th. That said letters of administration were improperly granted to the said L. B. Hardin, as administrator of the said estate of the said John D. Ware, deceased, because they say he failed and neglected to file in the office of the clerk of the honorable court of probate for said Crittenden county the affidavit required by law, stating the value of the said estate, that the said John D. Ware died

intestate, and the name and residence of the heirs of the said John D. Ware.

10. That said letters of administration ought not to have [been] granted to the said L. B. Hardin, because they charge and say that he, the said L. B. Hardin, was not an heir, begotten, or creditor of said estate, and consequently was not entitled to the administration thereof.

11th. That these plaintiffs, being the heirs-at-law of the said John D. Ware, deceased, were, or some one of them was, entitled to the administration of said estate, and that they were entitled to thirty days after the death of said intestate, John D. Ware, in which to apply to the honorable the probate court of said Crittenden county for such administration, which they said was not allowed to
241 them, the said L. B. Hardin having been appointed as ad-
administrator of the estate of the said John D. Ware, deceased, only seven days after his, the said John D. Ware's, death.

That no notice was ever given these plaintiffs, or any one of them, to come forward and take letters of administration upon the estate of the said John D. Ware, deceased, or of the intended application of the said L. B. Hardin for administration of the said estate to give bond in double the value of the estate.

Complainants state that said estate is worth eleven or twelve thousand dollars, and that said bond was taken by said court for eight thousand dollars, which will be seen by examination of Exhibit "Q" in this bill, and said exhibit is asked to be taken as a part to this bill.

Complainants further state that subsequent to the taking of said bond said probate [court] ordered said L. B. Hardin to give another bond in the sum of fourteen thousand five hundred dollars. Said order of said court probate and the bond are here shown to the court, marked Exhibits 4 and 5, and prayed to be taken as part of this bill.
242 Complainants charge that said second bond, which was taken in lieu of the first bond, is not large enough to cover the amount of money that will come into his hands as administrator of said estate, and said bond should have been taken in the sum of twenty-two or four thousand dollars.

Complainants further charge that the said L. B. Hardin did not make the affidavit as to the names and residences of the heirs of John D. Ware, deceased, and that John D. Ware died without a will, and that he would make a perfect inventory of and faithfully administer all *the* and singular the goods and chattels, rights and credits of the deceased, John D. Ware, and pay all of his debts, as far as the assets may come to his hands shall extend and the law will direct; and that he will account for and pay over all moneys, according to law, of the assets that shall come into his hands.

Complainants further charge and state unto the honorable court that one William Hardin is indebted to the aforesaid estate in the sum of ten thousand five hundred dollars, and that the said William Hardin is a brother of the said defendant, L. B. Hardin, and that the appointment of L. B. Hardin administrator of the aforesaid

estate was brought about by the fraudulent influence
243 of the said William Hardin with said probate court of Crittenden county for the purpose of checking, impeding, and delaying a speedy administration of said estate and for the purpose of cheating and defrauding said estate.

Complainants state, and so affirm, that under the circumstances said court used very bad judgment and acted improperly in appointing the said L. B. Hardin administrator of said estate, as Wm. Hardin was indebted to said estate of John D. Ware, deceased, in a very large amount.

Complainants further state and charge that if they had known or had the least intimation that the said L. B. Hardin would apply to said court for the appointment of the administration upon said estate, they would have appeared before said probate court and resisted the application of the said L. B. Hardin, as your complainants deem the said L. B. Hardin a very unfit and unsuitable person to take charge and manage said estate, and they would have asked said court to appoint a man that would administer the estate according to the law of the land, if an administrator would have been necessary to prevent said estate from waste or ruin.

244 Complainants further state that there was no urgent necessity for the said probate court to appoint an administrator upon said estate, as said estate was not subject to waste or go to ruin (at the time said court did appoint the said L. B. Hardin administrator).

Complainants charge all and every act and thing towards the appointment of the said L. B. Hardin, administrator of said estate, that appears upon the records of said probate court are here to the court shown, marked Exhibits "1, 2, 3, 4, and 5."

Complainants charge that said appointment of the said L. B. Hardin is utterly and entirely void, and that if no resistance was made by those complainants that the said L. B. Hardin would be unable to wind up the business of said estate.

Complainants charge that they are informed, and so believe, that all the sureties on first bond are wholly and totally insolvent, and that the sureties on said second bond are insolvent, except E. B. Leinis, and if the said L. B. Hardin is allowed to continue said administration they are in a fair way to loose the whole of said estate.

245 All of the acts and doings of the said L. B. Hardin are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and orat-ices in the premises.

In tender consideration whereof, and forasmuch as your complainants are remediless at law and have only recourse in your honorable court where matters of this kind and nature are properly cognizable and relievable, and to the end thereof justice may be done in the premises:

Your orator and orat-ices pray that the said L. B. Hardin may be made a party defendant in this cause; that copy and subpœna issue to be served upon the said L. B. Hardin, and that he may be required to answer each one of these charges and allegations set forth

in this bill, as if he were especially interrogated thereto, under his corporal oath, by the next regular term of your honorable court.

And your orators and orat-ices pray that the honorable court may order an account to be taken by the clerk of your honorable court, or any other suitable person or persons whom your honor shall see proper to appoint, to take an account of all the notes, bonds, bills
246 of exchange, accounts, choses in action, and other property that has come into the hands of the said L. B. Hardin, or any other person or persons acting for him, or any property of every kind that ought to have come into his hands under and by said void appointment as administrator of the said estate of John D. Ware, dec'd.

Complainants further pray when said account shall have been taken by some suitable persons appointed by your honorable court, and the same shall prove favorable to these complainants, that this court will decree and adjudge that the said L. B. Hardin will pay and hand the same over to said persons, subject to the order of the legally-appointed administrator of said estate of John D. Ware, dec'd; and in case the said L. B. Hardin, or any one acting for him under said illegal and void appointment, shall fail and refuse to pay over what money in hand and other such property as he may have or what may have come into his hands or what should have come into his hands, will issue an execution as at law against the said L. B. Hardin and his securities on said bond.

Complainants further pray that this honorable court will
247 issue, or cause to be issued, writs of injunction restraining and enjoining the said L. B. Hardin, or any other person, from any further acting under said void and illegal appointment as administrator of John D. Ware, dec'd, and will, upon a final hearing of this cause, *will* make said injunction perpetual and will make decree void, and set aside said letters of administration granted to the said L. B. Hardin by said probate court of Crittenden county, and all of his acts under said appointment.

And complainants further pray that such other further and general relief may be afforded and granted unto complainants as the equity, nature, and good conscience may demand and require. And they will ever pray.

COLLINS, BOYD & THOMPSON,
Solicitors for Compla'nts.

STATE OF TENNESSEE, *Haywood County:*

Personally appeared before me, Thomas A. Rayner, clerk of the circuit court of Haywood county, State of Tennessee, John J. Ware, one of the complainants in the foregoing bill, who makes oath in due form of law that the foregoing statements and
248 allegations set forth in said bill are true to the best of his knowledge, information, and belief, and those made referring to the statements of others he believes to be true.

JOHN J. WARE.

Sworn to on this 15th day of August, A. D. 1872.
[SEAL.] THO. A. RAYNER,
Clerk of Circuit Court.

The foregoing bill having been presented and considered I am of opinion that the plaintiff is entitled to relief. The clerk of the Crittenden county circuit court will therefore issue process directed to L. B. Hardin, adm'r, enjoining him from further proceedings of any kind in the administration of the estate of John D. Ware, deceased, and that until otherwise directed he hold the effects of said estate, subject to the further order [of] the proper circuit court of Crittenden county, and that he appear on the first day of the next regular term of said court and show, if he can, why a receiver shall not be appointed to take possession of the goods, chattels and effects, and his letters of administration issued by the probate court
249 of Crittenden county canceled and set aside.
MARSHAL L. STEPHENSON, *Judge.*

Done at Helena, Ark., on the 16th day of September, A. D. 1872.

Probate Record. Monday Morning.

Estate of J. D. WARE Deceased. L. B. HARDIN, Administrator.

On this day the bond of said administrator of said estate, taken in the sum of eight thousand dollars, with W. R. Price, Charles Ward, and A. M. Clements as his securities, is examined and approved by the court, and the clerk or deredto issue letters of administration to said L. B. Hardin on said estate.

250 *Administrator's Bond.*

STATE OF ARKANSAS }
County of Crittenden, } *ss:*

In Court of Probate. December, 187–.

Estate of J. D. WARE, Deceased.

Know all men by these presents, that we, L. B. Hardin, W. R. Price, Chas. Ward, and A. M. Clement, are held and firmly bound unto the State of Arkansas in the just and penal sum of eight thousand dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals at ——, this 23d day of December, A. D. 1872.

The condition of the above obligation is such, that if the above bounden L. B. Hardin, administrate- of all and singular the goods and chattels, rights and credits of John D. Ware, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which have or may come to the hands, possession, or knowl-

edge of the said L. B. Hardin, or into the hands or possession of any other person for ——, and the same so made shall return and
251 exhibit in the office of the clerk of the court of probate for the county of Crittenden, within sixty days from the date of the above obligation, and all and singular the goods and chattels, rights, and credits of the deceased which shall come to the hands, possession, or knowledge of him, the said L. B. Hardin, shall well and truly administer according to law, and pay the debts of the deceased as far as the assets will extend and the law direct; and further make or cause to be made just and true accounts of his administration, and make due and proper settlement thereof from time to time according to law, or the lawful order, sentence, or decree of any court having competent jurisdiction, and shall moreover well and truly do and perform all other matters and things touching such administration, that are or may be prescribed by law, or enjoyed on such administrat. by the lawful order, sentence, or decree of any court having competent jurisdiction, then the above obligalion to be void and of no effect; otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals the day and year first above written.

L. B. HARDIN. [SEAL.]
W. R. PRICE. [SEAL.]
CHARLES WARD. [SEAL.]
A. M. CLEMENT. [SEAL.]
R. C. WALLACE.
C. B. LEWIS.

252 THE STATE OF ARKANSAS, *County of Crittenden:*

The State of Arkansas to all to whom this presents shall come, Greeting:

Know ye, That, whereas, John D. Ware, of the county of Crittenden, died intestate, as it is said, on or about the —— day of ——, A. D. 1871, having, at the time of his death, personal property in this State which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same:

To the end, therefore, that said property may be collected, preserved, and disposed of according to law, we do hereby appoint L. B. Hardin, of the county of Crittenden, administrator of all and singular the goods, chattels, rights, and credits, which were of the said J. D. Ware at the time of his death, with full power and authority to secure and dispose of the said property according to law, and collect all moneys due said deceased, and, in general, to do and perform all other acts and things which are or hereafter may be required of — by law.

In testimony whereof, I, John Swepston, clerk of the circuit court and *ex-officio* clerk of the court of probate in and for the county of Crittenden aforesaid have hereunto set my hand and affixed the seal of said court, at office, this 23 day of December, A. D. 1871.

[SEAL.] JOHN SWEPSTON, *Clerk.*

253 *Probate Record. March* 4, 1872.

Estate of J. D. WARE, deceased. L. B. HARDIN, administrator.

Now, on this day, a new bond of said administrator heretofore filed in vacation, like, in the sum of fourteen thousand five hundred dollars, as per previous order of this court, with W. R. Price, R. C. Wallace, and E. R. Lewis as securities, is examined in open court, and approved by the court.

Administrator's Bond.

STATE OF ARKANSAS, } ss:
County of Crittenden, }

In the Court of Probate.

Estate of J. D. WARE, Deceased.

FEBRUARY 27TH, 1872.

Know all men by this presents, that we, L. B. Hardin, R. C. Wallace, E. B. Lewis, W. R. Price, A. M. Clements, are held and firmly bound unto the State of Arkansas in the just and penal sum of fourteen thousand five hundred dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

254 Witness our hands and seals, at Marion, this 27th day of February, A: D. 1872.

The condition of the above obligation is such, that if the above bounden L. B. Hardin, administrat. of all and singular the goods and chattels, rights and credits of J. D. Ware, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which have or may come to the hands, possession, or knowledge of him, the said L. B. Hardin, or into the hands or possession of any other person for him, and the same so made shall return and exhibit in the office of the clerk of the court of probate for the county of Crittenden, within sixty days from the date of the obove obligation; and all and singular, the goods and chattels, rights and credits of the deceased which shall come to the hands, possession, or knowledge of him, the said L. B. Hardin, shall well and truly administer according to law, and pay the debts of the deceased as far as his assets will extend and the law direct, and further make, or cause to be made, just and true accounts of his administration, and make due and proper settlement thereof from time to time, according

255 to law or the lawful order, sentence, or decree of any court having competent jurisdiction, and shall, moreover, well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law or enjoyed on such administrat. by the lawful order, sentence, or decree of any court having competent jurisdiction; then the above obligation to be void and of no effect; otherwise to remain in sull force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals, the day and year first above written.

L. B. HARDIN. [SEAL.]
W. R. PRICE. [SEAL.]
R. C. WALLACE. [SEAL.]
E. B. LEWIS. [SEAL.]

STATE OF ARKANSAS, *Crittenden County:*

I, John Swepston, county clerk and *ex officio* clerk of probate court of the said county of Crittenden, and the State of Arkansas, do hereby certify that the foregoing papers Nos. 1, 2, 3, 4, & 5, are a true, complete, & full transcript of all the proceedings had in said
256 cause appertaining to the appointment of L. B. Hardin, administrator of J. D. Ware, dec'd, as the same now appear in my office.

Given under my hand and official seal this Aug. 12th, 1872.

[SEAL.] JOHN SWEPSTON, *Clerk*,
By S. P. SWEPSTON, *D. C.*

Endorsed: Filed & issued on Sept. 26, '72. John Swepston, clerk, by S. P. Swepston, D. C.

Bill in Equity.

Crittenden Probate Court.

WILLIAM D. HARDIN, P't'f, *vs.* ESTATE OF J. D. WARE, Def't. } Bill.

William D. Harding, plaintiff herein, states that his bill of particulars hereunto attached, contains a full and accurate ac-
257 count between himself and J. D. Ware, now deceased.

That said bill of particulars is copied from books of account kept at the time of the transactions, and facts therein set forth were done, made, and occurred with dates, &c., and from bills rendered by various merchants, &c., &c., which said accounts are herewith presented to this honorable court for reference and marked A, and that he has allowed the estate of the said John D. Ware, dec'd, all credits that he is aware of, and that his said bill amounts to the sum of $1,638.24, as per bill filed, marked B, and that the indebtedness of the said estate to him amounts to the sum of $2,333.65, as per bill rendered and to the court here presented, marked C, and that said sum is just and now due and owing, and that nothing has been paid on the same. He therefore asks that the same be allowed and classed No. ——, and for such other relief as he may be entitled to in the premises.

NICHOLS & CRITTENDEN,
Atty's for Plaintiff.

W. D. Hardin, on his oath, says that the facts set forth in
258 the above petition are true, as he verily believes.

W. D. HARDIN.

Sworn to and subscribed before me, this Aug. 30th, 1872.
M. H. WING, *J. P.*

The said account has been examined and found correct, and the same is allowed with this reservation, that if it shall appear upon further examination that there are other credits that should be given in favor of the estate of John D. Ware, dec'd, the same shall be rendered and allowed.

L. B. HARDIN,
Adm'r of John D. Ware, dec.

259 EST. J. D. WARE, Cr.

1869.			
M'ch	29.	Cash paid to M. Roberson	5 00
"	"	" " " 10 y'ds domes	3 00
Apr.	24.	" " " 5 " "	1 00
"	"	" " " M. Roberson	5 00
		" " " 4 y'ds domes	80
		" " " M. Robeson	7 00
May	1.	" " " E. Geter	12 00
		" " " 8 y'ds pl'd domes	2 40
		" " " 1 hat	50
		" " " Geter	2 00
		" " " 10 y'ds domes	2 00
		" " " " " " pl'd	3 00
		" " " D. Knox 4 y'ds	1 20
		" " " " " 16 "	4 80
		" " " " "	2 00
		" " " " "	2 00
		" " " " " 16 y'ds prints	2 40
		" " " " "	5 00
		" " " Page Jackson	5 00
		" " " Sophia Johnson	1 00
		" " " B. Nelson	16 25
		" " " Jno. Smith	5 00
		" " " Wm. McNeiley	4 00
		" " " Monroe Quall	4 00
		" " " " " shoes, &c.	4 00
		" " " Bob	12 00
		" " " Thos. Browns	3 00
		" " " " " domes	1 20
		" " " " "	2 00
"	17.	" " " " ———	10 00
		" " " Jack Ford	10 00
			138 55

260

		Am't bro't forward	138 55
May	17.	Cash paid to baskets	15 00
		" " " Jeff. Ware, horse	25 00

May	17.	Cash paid to Jeff. Ware	1 00
		" " " Fred. Ware, donst	60
		" " " Jane, for calico	1 50
		" " " Ann " domes	2 00
		" " " " " domes	90
Aug.	19.	" " " hands	85 00
		Cotton sold by Hardin	797 41
		Difference in favor Hardin	571 28
		Amount of Ware's known credits	1,638 24

261 ESTATE OF J. D. WARE, Dec'd, Dr. to WILLIAM HARDIN.

To John Denton, ginning cotton		20 00
" cash paid for pork		47 00
" cash " " bacon		30 00
" Jack Lyles, ginning		10 00
" cash for sacks		1 00
" " bacon		50 00
" " coal		11 00
" " ferriage		1 70
" " sugar		3 00
" " dipper		50
" " whiskey		15 00
" " plow line, etc.		2 50
" " cotton seed & freights		21 15
" " planting cotton		12 00
" " tobacco		20 04
" " prints, 9 yds.		1 25
" " " "		2 25
" " bacon & freights		15 52
" " salt, 1 bbl.		3 75
" " men for labor		19 00
" " John Smith		1 40
" " Manrose		65 00
" " D. Knox		11 25
" " Roberson		4 00
" " Page		5 00
" " Margarett Smith		30 00
" " hauling corn, Mrs. Nelson		1 75
" " Bob		1 00
" " John Smith		2 00
" " hauling cotton		16 75
" " Missouri		2 00
" " Roberson		35
" " plow points		1 50
" " D. Knox		50
" " John Smith		20
Am't carried forward		429 36

262		Amount bro't forward	429	36
		To cash paid to William Mason	1	10
		" " Isaac	5	50
July	29.	" " Jack Ford	10	00
		" " W. Missouri	4	50
		" " Roberson		25
		" " Emmer Ford	5	00
		" " hauling cotton, Dick	3	00
		" " Big Armanda	16	00
		" " hauling cotton, Buckner	3	75
		" " John Smith	1	25
		" " Jeff. Ware		50
		" " Jack Ford		50
		" " Ellen Smith	13	00
		" " Lute	1	00
		" " Bill & Sam, hauling	16	00
		" " Mary	2	25
June	13.	" " Old Phil	2	25
		" " John Forest	2	25
		" " pork, 2 bbls	66	50
		" " freights, &c		75
		" " Robert	2	75
July	5.	" " Simon	25	00
"	3.	" " Tush	2	50
June	20.	" " Charlie Griffin	4	50
	"	" " "	31	70
July	10.	" " pork, 2 bbls.	68	00
		" " sugar, 100lb	18	00
		" " freight, &c.	2	80
		" " Phil Jackson	59	50
		" " Charlie Griffin	49	95
		Am't carried forward	849	41
263		Am't bro't forward	849	41
July	10.	To cash paid to sundries	6	00
		" " John Smith	10	00
		" " John Smith	72	00
		" " W. Missouri	5	00
		" " Bob	5	00
		" " Mac., 1 month	15	00
Dec.	10.	" " picking	157	35
		" " 83 "	19	20
		" " pork, 2 bbls.	50	00
		" " tobacco	14	99
		" " sugar & sundries	42	02
		" " Apperson Bill A	20	75
M'ch	4.	" " " " B	50	00
	15.	" " " " C	15	09
June	26.	" " " " D	42	02

M'ch	18.	To cash paid to Apperson	Bill pork, &c.	34 50
Apr.	5.	" " " "	" ----	38 00
	29.	" " " "	flour, &c.	10 75
May	18.	" " " "	pork, &c.	33 50
July	22.	" " " "	" ----	45 50
Aug.	28.	" " " "	meal, &c.	5 50
Sept.	1.	" " " "	pork, &c.	55 25
	17.	" " " "	3 pork, &c.	123 34
	21.	" " " "	lard	11 77
Oct.	8.	" " " "	pork	42 50
Dec.	3.	" " " "	2 "	66 00
	11.	" " " "	coffee	35 00
July	8.	" " pork, &c., Dowdy		88 80
Aug.	24.	" " flour, &c., "		67 68
		Cotton sold by J. D. Ware, 19 bales		1,939 97
		Further amount of Hardin's credits		3,971 89

264 *Appeal Bond.*

Crittenden Circuit Court.

MARIA WARE, JAMES MOSES & WIFE, JOE LETT & WIFE, EMMA WARE, WILLIAM WARE, & MAGGIE WARE, Appellants,

v.

L. B. HARDIN, Adm'r of John D. Ware, dec'd, Appellee.

John J. Ware, & the other heirs-at-law of the said John D. Ware, dec'd, above mentioned, having prayed an appeal to the Crittenden circuit court from the judgment of Thos. L. Dougherty, probate judge of the county of Crittenden, and State of Arkansas, & by him as said judge rendered in the proceedings of the said heirs against the adm'r of the estate of John D. Ware, dec'd, to wit, L. B. Hardin, for refusing to set aside the letters of administration to him, the said L. B. Hardin, granted & hold the same null & void. Now, if the said judgment is affirmed, we covenant to pay the costs of this appeal.

Witness our hands, this May 3rd, 1872.

A. S. GREGSBY, JR.
R. F. CRITTENDEN.

Endorsed: Filed and approved May the 4th, 1872. John Swepston, clerk.

265 *Petition.*

Crittenden Probate Court.

L. B. HARDIN, ADM'R ESTATE OF J. D. WARE,

vs.

Ex parte ———.

To Hon. M. H. Wing, judge of probate, &c., in and for Crittenden county, State of Arkansas:

Your petitioner, L. B. Hardin, presents to your honor that he is administrator of the estate of John D. Ware, deceased.

That said estate is indebted to various parties whose claims have been to administrator presented to a large amount, the aggregate of which is to your petitioner unknown.

That there are no available means in the hands of your petitioner as such adm'r of said estate to pay such indebtedness as it may be allowed against said estate by the honorable the court of probate for said Crittenden county.

That said administrator, L. B. Hardin, your petitioner has in his hands and possession a large amount of county warrants of said Crittenden county, commonly called county scrip, say some ten thousand ($10,000) dollars; that said scrip is greatly depreciated in value, and cannot be made available in its present form for
266 payment of debts, or for the benefit of the said estate.

He therefore prays that your honorable court do make an order authorizing your petitioner as such adm'r to sell either at public or private sale, as seems best to your honorable court, the said county warrants at such time under such terms as your honorable court may decree and direct, and that the proceeds of said sale be ordered paid by your petitioner as such administrator in discharge of the indebtedness of said estate, and for all other proper relief.

NICHOLS & CRITTENDEN,
Att'ys for Petitioner.

L. B. Hardin, being sworn, says: That the facts in the above petition are true to the best of his knowledge and belief.

L. B. HARDIN,
Adm'r of J. D. Ware, Dec'd.

Sworn to & subscribed before me, this August 30th, 1872.
M. H. WING, *J. P.*

Endorsed: Filed Aug. 30, '72. John Swepston, clerk, by S. P. Swepston, D. C.

Also endorsed: Petition heard and granted, this 30 day of August 1872, and administrator ordered to sell said county scrip at public or private sale as he may consider to be for the best interest of the estate. M. H. Wing, judge.

267 STATE OF ARKANSAS, *County of Crittenden:*

In the Matter of the Estate of J. D. WARE, Dec'd.

I, W. D. Hardin, a creditor of the estate of J. D. Ware, dec'd, do hereby renounce my right to the administration of said estate in favor of L. B. Hardin.

Witness my hand, by attorney, this February 20th, 1872.
W. D. HARDIN,
By C. W. BRYANT, *Att'y.*

Endorsed: Filed Feb'y 20th, '72. John Swepston, clerk, by S. P. Swepston, D. C.

268 *Administrator's Bond.*

STATE OF ARKANSAS, }
County of Crittenden, } ss:

In the Court of Probate. December, 1871.

Estate of J. D. WARE, Deceased.

Know all men by these presents, that we, L. B. Hardin, W. R. Price, & Chas. Ward, A. M. Clement, are held and firmly bound unto the State of Arkansas in the just and penal sum of eight thousand dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by the presents.

Witness our hands and seals at ——, this 23 day of December, A. D. 1871.

The condition of the above obligation is such, that if the above-bounden L. B. Hardin, administrat[or] of all and singular the goods and chattels, rights, and credits of John D. Ware, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of John D. Ware, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights, and
269 credits of the said deceased which have or may come to the hands, possession, or knowledge of the said L. B. Hardin, or into the hands or possession of any otherperson for —, and the same so made, shall return and exhibit in the office of the clerk of court of probate for the county of Crittenden within sixty days from the date of the above obligation, and all and singular the goods and chattels, rights and credits of the deceased which shall come to the hands, possession, or knowledge of him, the said L. B. Hardin, shall well and truly administer according to law, and pay the debts of the deceased, as far as the assets will extend and the law direct; and further, make, or cause to be made, just and true accounts of his administratration, and make due and proper settlement thereof; and from time to time, according to law, or the lawful order, sentence, or decree of any court having competent jurisdiction; and shall, moreover, well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law, or enjoyed on such administrat. by the lawful order, sentence, or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect; otherwise to remain in full force and virtue.

270 In testimony whereof, we have hereunto set our hands and affixed our seals the day and year first above written.

L. B. HARDIN. [SEAL.]
W. R. PRICE. [SEAL.]
CHARLES WARD. [SEAL.]
A. M. CLEMENT.
R. C. WALLACE.
E. B. LEWIS.

(Endorsed:) Filed Dec. 23d, 1871. John Swepston, clerk, by S. P. Swepston, D. C.

Administrator's Bond.

Estate of J. D. WARE deceased. Administrator's Bond.

STATE OF ARKANSAS }
County of Crittenden, } ss:

In the Court of Probate.

FEBRUARY 27TH, 1872.

Know all men by these presents, that we, L. B. Hardin, R. C. Wallace, E. B. Lewis, W. R. Price, A. M. Clement, are held and firmly bound unto the State of Arkansas, in the just and penal sum of fourteen thousand & five hundred dollars, for the payment
271 whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals at Marion, this 27th day of February, A. D. 1872.

The condition of the above obligation is such that if the above bounden L. B. Hardin, administrator of all and singular the goods and chattles, rights and credits of J. D. Ware, deceased, shall make or cause to be made a true and perfect inventory of all and singular the goods and chattles, rights and credits of the said deceased, which have or may come to the hands, possession, or knowledge of him the said L. B. Hardin, or into the hands or possession of any other person for him, and the same so made shall return and exhibit in the office of the clerk of the court of probate for the county of Crittenden, within sixty days from the date of the above obligation, and all and singular the *the* goods and chattels, rights and credits of the deceased which shall come to the hands, possession, or knowledge of him the said L. B. Hardin, shall well and truly administer according to law, and pay the debts of the deceased as far as his assets will extend and the law direct; and further make or cause to be made, just and true accounts of his administration, and make due
272 and proper settlement thereof, from time to time, according to law, or the lawful order, sentence, or decree of any court having competent jurisdiction, and shall moreover well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law or enjoyed on such administrat. by the lawful order, sentence, or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect; otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals the day and year first above written.

L. B. HARDIN. [SEAL.]
W. R. PRICE. [SEAL.]
R. C. WALLACE. [SEAL.]
E. B. LEWIS.

Endorsed: Approved M'ch 4th, 1872. W. L. Dougherty, judge.

Also endorsed: Approved this 27th day of November, 1872. M. H. Wing, judge. Filed 27th Feb'y, 1872. John Swepston, clerk, by S. P. Swepston, D. C.

273 *Administrator's Notice and Certificate of Clerk.*

STATE OF ARKANSAS, *County of Phillips:*

I hereby certify that the annexed advertisement was published 4 consecutive times in the Helena Weekly Clarion, the first of which was on the 16th day of March, and the last on the 6th day of April, 1872.

JAMES B. MILES,
Publisher.

Sworn to and subscribed before me, this 10th day of April, 1872.
SAMUEL I. CLARK, *County Clerk.*
By CHARLES A. WATERHOUSE, *D. C.*

Printer's fee $6.75.

Received payment,
JAMES B. MILES.

Administrator's Notice.

Notice is hereby given that in the estate of J. D. Ware, deceased, letters of administration, bearing date of the 23rd day of December, 1871, have been granted the undersigned, L. B. Hardin, by the Crittenden probate court, on the estate of J. D. Ware, deceased. All persons having claims against said estate are warned to exhibit them, properly authenticated for allowance, within one year from the date of said letters, or they may be precluded from any benefit of said
274 estate, and if such claims be not exhibited within two years from the date of this notice, they shall be forever barred.

L. B. HARDIN,
March 16th, 1872. *Administrator.*

Petition of L. B. Hardin, Adm'r.

In Probate Court.

STATE OF ARKANSAS, *County of Crittenden:*

To the Hon. Thomas L. Dougherty:

L. B. Hardin would most respectfully represent unto your honor that he is now the adm'r estate of J. D. Ware, dec'd; that on the 28th day of March, 1871, said J. D. Ware executed to one W. D. Hardin his title bond in the sum of twenty thousand dollars for the conveyance, on the 1st day of Jan., 1872, to the said W. D. Hardin a half interest of certain lands in said county, and all interest after accruing to said J. D. Ware in said lands, with full and general warrantees and covenants, said lands being specifically described in

said bond, which is filed herewith and made part of this petition; that on the 1st day of January, 1872, said W. D. Hardin paid
275 to the petitioner, said L. B. Hardin, the sum of ten thousand dollars in the scrip or treasury warrants of Crittenden county, the only amount remaining due unpaid upon said lands so described by the terms and conditions of said bond.

Wherefore your petitioner prays an order from this honorable court for the conveyance of said lands according to the conditions of the bond therewith filed.

Your petitioner will ever pray, etc.

L. B. HARDIN,
Administrator Est. J. D. Ware.

Endorsed: Petition heard and granted, January term, 1872. Thos. L. Dougherty, j'dge.

Petition of John J. Ware et al.

To the Honorable Thomas L. Dougherty, judge of the probate court of Crittenden county, Arkansas:

Your petitioners, John J. Ware, Maria Ware, James Moses and wife, Joe Lett and wife, Emma Ware, Maggie Ware, and William Ware, distributees and legatees of John D. Ware, dec'd, would
276 move the honorable court to set aside and revoke the letters of administration granted to L. B. Hardin by this honorable court on the 23rd of Dec., 1871, first, because the party, L. B. Hardin, to whom letters of administration was granted, was not entitled to said administration.

2d. Because the administration was granted to L. B. Hardin, who was not entitled to the same.

3d. Because the heirs and legal representatives of said estate had no notice of the same.

4th. Because the said appointment was granted within thirty days after the death of the said J. D. Ware.

5th. Because the said L. B. Hardin was no creditor of said estate, distributee of said estate, nor was he the public administrator of said county.

6th. Because at the time the honorable court granted letters of administration to the said L. B. Harding, there were no appraisers appointed to go with the said L. B. Hardin to examine into the affairs and condition of said estate, as required by law.

Because at the time the said L. B. Hardin applied to the honorable court for letters of administration upon said estate, there was no affidavit filed stating, to the best of [his] knowledge and belief,
277 the name and place of residence of the heirs of the deceased, died, without a will; that he will make a perfect inventory of, and faithfully administer all, the estate of the deceased, and pay the debts as far as the assets will extend and the law admit, and account for and pay all the assets which shall come into his possession or knowledge.

7th. And your petitioners would humbly charge and state that

the surety upon said administration bond is wholly insufficient to cover and properly secure said amount that would legally go into the hands of the said L. B. Hardin.

Your petitioners therefore pray that this honorable court shall not see proper in its wisdom and judgment to revoke and set aside said letters of administration granted to the said L. B. Hardin; will, for the reasons heretofore set forth, require the said L. B. Hardin to give other and good security to insure the faithful discharge of all the duties involved upon him as the administrator of said estate of J. D. Ware, dec'd.

JOHN J. WARE.
MARIA WARE.
JAMES MOSES & WIFE.
JOE LETT & WIFE.
EMMA WARE.
WILLIAM AND MAGGIE WARE.

By their autherized—

CULUE & BOYD, *Atty's.*

278 (Endorsed:) The within petition heard and administrator ordered to make new bond in the sum of fourteen thousand and five hundred dollars on or before the 27th day of February, 1872. Thos. L. Dougherty, judge. Filed Feb'y 20, '72. John Swepston, clerk, by S. P. Swepston, D. C.

Inventory of Property.

In the Matter of the Estate of J. D. WARE, dec'd.

Inventory of the personal estate of J. D. Ware, dec'd, by L. B. Hardin, administrator:

1st. Ten thousand dollars in the scrip or treasury warrants of Crittenden county, Arkansas, now in possession of administrator.

2nd. One note *vs.* A. J. Cunningham and Wm. B. Dickerson, due August 14, 1860, for the sum of eight hundred dollars. Suit has been brought on said note in the Crittenden circuit court, Arkansas, by C. W. Bryant, attorney.

279 3rd. One note *vs.* Thos. L. Dougherty, for the sum of two hundrod and five dollars.

Due on 19th day of October, 1866.

Endorsed across face: Error.

4th. One claim *vs.* estate of Rob't B. Malone, for the sum of two hundred and five dollars.

Probated on the 19th day of October, 1869.

5th. One account *vs.* Jeff Ware, for the sum of one hundred dollars.

L. B. HARDIN, *Administrator.*

STATE OF ARKANSAS, *County of Crittenden*:

I, L. B. Hardin, do solemnly swear that the annexed and foregoing is a full inventory and description of all the goods and estate, real and personal, books, papers, and evidences of debt and of title of the deceased, and all debts due and becoming due so far as I can ascertain them, and that I am not indebted to the deceased, or bound in any contract to him at the time of his death, except as stated in the said inventory.

280 Sworn to and subscribed before me, this 20 day of February, 1872.

JOHN SWEPSTON, *Clerk.*
By S. P. SWEPSTON, *D. C.*

(Endorsed:) Filed Feb'y 20, '72. John Swepson, clerk, by S. P. Swepston, D. C.

Probate Court. Jan'y Term, March 4, 1882.

STATE OF AKANSAS, *County of Crittenden.*

JOHN D. WARE *et al. v.* L. B. HARDIN, Adm'r of J. D. Ware, de'd.

On the 27th day of Feb'y, 1872, comes the pl'ff & moves for new bond & approval of the def't.

Motion sustained & appeal granted & pl'ff required bond good & sufficient security.

THOS. L. DOUGHERTY.

Attend to this work.

THOS. L. DOUGHERTY.

281 STATE OF ARKANSAS, *County of Crittenden.*

Be it remembered that at a probate court of said county, begun and held at the clerk's office (there being no court house in said county), in the town of Marion, in said county, on the 15th day of January, 1872, the same being the third Monday in said month, and the time fixed by law for holding said court, was present and presiding the Hon. Thomas L. Dougherty, judge of said court, and was also in attendance W. D. Hardin, sheriff of said county, one John Swepston, clerk of said court, and when the court was declared duly opened acording to law the following proceedings were had, to wit:

Among other proceedings the following were had:

Estate of J. D. WARE, Deceased. L. B. HARDIN, Adm'r.

On this day the bond of said administrator, administrator of said estate, taken in the sum of eight thousand dollars, with W. R. Price, Charles Ward, and A. M. Clement, as his surities, is examined
282 and approved by the court and the clerk ordered to issue letters of administration to said L. B. Hardin on said estate.

In the Matter of the Estate of J. D. WARE, deceased.

And now on this day comes L. B. Hardin, duly qualified and appointed administrator of the estate of J. D. Ware, deceased, whose bond, with sufficient security, has been approved by the court at the present term thereof, and now on file in the office of the clerk of this court.

And by petition shows to the court that on the 28th day of March, 1871, said J. D. Ware executed to one W. D. Hardin his bond in the sum of twenty thousand dollars, to be void on the following conditions, to wit: That on the 1st day of Jan'y, 1872, upon the payment to said J. D. Ware or his legal representatives by said W. D. Hardin the sum of ten thousand dollars in the scrip or treasury warrants of Crittenden county, Arkansas, he, the said John D. Ware, or his legal representatives, would execute to the said W. D. Hardin a good and sufficient deed to an undivided half interest in and to the following-described lands, to wit: The southwest ¼ of Sec. 22; the northwest ¼ of Sec. 27; the north fr. ½ of Sec. 28; the east ½
283 of the west ½ of Sec. 15; the east half of the southwest ¼ of Sec. 10; an undivided interest containing $155\frac{23}{100}$ acres of a Spanish grant or confirmation in the name of Augustus Gonzier, No. 2931, lying on both sides of the military road and on both sides of the Fifteen-Mile Bayou, and mostly in Sec. 28, and the north ¼ of Sec. 29, said lands all lying in township 7 north, range 8 east, of fifth principal meridian, being situated in the county of Crittenden and State of Arkansas, together with all estate, right, title, or interest accruing to said J. D. Ware in or to the said lands to or through the said J. D. Ware, all which referred to in said title-bond duly executed and recorded in book "M" of the records of Crittenden county, in said State, on pages 598, 599, 600, lands aforesaid being more specifically described and set out in bonds referred to. And the said L. B. Hardin further showing to the court that on the said first day of January, 1872, the said W. D. Hardin paid to him, the said administrator, the said sum of ten thousand dollars — the scrip or treasury warrants of Crittenden county, pursuant to the conditions of said bond, and the same the last due and unpaid
284 upon said lands, and the court being fully advised in the premises, it is ordered, adjudged, and decreed that L. B. Hardin, administrator of said J. D. Ware, pursuant to the conditions of said title bond, forthwith execute to said W. D. Hardin a good and sufficient deed for the said lands described herein and more fully set forth, conveying, with general warranties and covenants, to said W. D. Hardin, the undivided half interest the lands aforesaid, and all interest and estate hereafter accruing to the said J. D. Ware in said lands, or through J. D. Ware to the same.

Jan. 15th, 1872.

THOMAS L. DOUGHERTY, *Judge.*

TUESDAY MORNING, *February 20th*, 1872.

Court met pursuant to adjournment.

Present and presiding as on yesterday, when among other proceedings the following were had, to wit:

Estate of JOHN D. WARE, deceased. L. B. HARDIN, administrator.

On this day comes John J. Ware, Maria Ware, James Moses & wife, Joe Lett & wife Emma, William Ware, & Maggie Ware,
285 distributees, legatees of the estate of J. D. Ware, deceased, by att'y, and moves the court here to revoke and set aside the letters of administration granted by this court to L. B. Hardin upon the estate of J. D. Ware, deceased, and in the event that this court should not see proper to revoke and set aside said letters of administration, said distributees and legatees hereby pray that this court may require said administrator to give additional security as such. And the court having heard said petition, the evidence of witnesses, and the argument of counsel, and being fully advised in the premises, doth overrule the motion to revoke and set aside said letters, and doth order that said administrator give new bond as such administrator in the sum of fourteen thousand five hundred dollars by the 27th day of February, 1872. Thereupon petitioners, by attorney, move for appeal to the circuit court, which is granted.

Ordered that court adjourn until March the 4th, 1872, at nine o'clock a. m.

THOS. L. DOUGHERTY, *Judge.*

MONDAY MORNING, nine o'clock, *March the 4th*, 1872.

Court met pursuant to adjournment.

286 Present and presiding as at adjournment, when the following proceedings were had, to wit: Among other proceedings the following were had:

Estate of J. D. WARE, deceased. L. B. HARDIN, administrator.

Now on this day the new bond of said administrator, heretofore filed in vacation, taken in the sum of fourteen thousand and five hundred dollars, as per previous order of this court, with W. R. Price, R. C. Wallace, and E. B. Lewis as securities, is examined and approved by the court.

Ordered that court do now adjourn until April the 5th, 1872.

THOS. L. DOUGHERTY, *Judge.*

AUG. THE 30TH, 1872.

Court met pursuant to adjournment.

Present and presiding as at adjournment, when the following proceedings were had, to wit: Among other proceedings were had:

And now on this day comes L. B. Hardin, administrator of the estate of John D. Ware, deceased, and files his petition asking for an order of this court directing him to sell for the best price
287 possible about ten thousand dollars of Crittenden county scrip belonging to said estate, and in his possession, and for the purpose of liquidating the indebtedness of said estate.

And the court being advised in the premises, doth grant the prayer of the petition, and said administrator is ordered to sell said scrip at either public or private sale, as he may consider to be for the best interest of said estate.

Estate of J. D. WARE, Dec. L. B. HARDIN, administrator.

$2,333.65.

On this day the claim of W. B. Hardin against said estate for two thousand three hundred and thirty-three dollars and sixty-five cents is allowed and classed in class No. 5.

Ordered that court do now adjourn until Thursday, Sept. 15th, 1872.

—— ——, *Judge.*

STATE OF ARKANSAS, *County of Crittenden:*

I, John Sweptson, county clerk & *ex-officio* clerk of the probate court within and for the said county, do hereby certify that
288 the foregoing pages contain a complete transcript of everything on the Probate Record "D" in the matter of J. D. Ware's estate and L. B. Hardin as administrator.

Witness my hand and seal, this 14th day of Oct., 1872.

[SEAL.] JOHN SWEPTSON, *Clerk.*

Answer of Hardin.

STATE OF ARKANSAS, *County of Crittenden:*

In Circuit Court of said County. In Chancery, Oct. 22d, 1872.

JOHN J. WARE ESTATE, Plaintiff, *vs.* L. B. HARDIN, Defendant.

Respondent L. B. Hardin, defendant in the above cause, now saving and reserving, &c., &c., and not abandoning, but relying on the demurrer heretofore filed, for answer to said complaint, answering, says: He admits the citizenship & heirship of complainants, as stated; the death of John D. Ware; that Ware had property, as stated; the appointment of B. P. Boyd as adm'r in Tennessee; that
289 Boyd went to Arks.; the appointment of respondent by the hon. probate court of Crittenden county.

Respondent denies that Boyd or J. J. Ware applied to respondent to resign, and that respondent refused so to do; but admits that the probate court refused to remove respondent, from which no appeal was taken. But respondent denies that his appointment as such adm'r was either fraudulent or void, and, on the contrary, avers that his said appointment was legal, regular, necessary, and in good faith, and just here respondent takes occasion to remark that at the time he accepted the appointment as administrator in Arkansas he did not even know that an administrator had been appointed in Tennessee, nor was it material to respondent, from the fact that he was receiving his power and authority from a court of competent jurisdiction. He denies that the administration in Arks. was not necessary,

and states that this is and was a matter entirely within the sound discression of the probate court of Crittenden county, Arks.; and he avers in fact that an administration was necessary to the end that there might be some one at once charged with the duty and
290 clothed with the power to look to the litigation in said last-mentioned county in which John D. Ware, deceased, was interested, and to look to the collection of a debt claimed from one A. J. Cunningham, &c., &c., &c.

As the affidavit made by respondent to obtain the letters he supposes it was all correct, at least it was such as was received by the probate court, and by that court approved. But if it be true that this affidavit is irregular, he will, with much pleasure, correct it, or file a new one when called upon by the proper court for that purpose.

Respondent states it is true he was appointed as adm'r soon after the death of Mr. Ware, but he denies that he was not entitled to such administration.

And here respondent states and avers that complainants, by their own complaint, show themselves and every of them disqualified to act as such administrator in this State, being non-residents thereof, which fact was known to respondent and the court at the time administration was granted, and so respondent sees no reason why complainants should so loudly complain, even if the thirty days had not expired; nor was it necessary to give notice to said com-
291 plainants to come forward and take out administration, nor could respondent have given them any such notice, except constructive notice, they not being within the jurisdiction of any of the courts of Arkansas.

As to the failure of the court to appoint two respectable persons to aid respondent in making an inventory, &c., respondent simply states that the law requires no such thing; respondent denies that his bond is not sufficient, and avers that it is sufficient, and his sureties good and solvent. But be this as it may, he is ready and willing at any time to enter into such bond as will meet the approbation of the court and all parties in good faith.

It is certainly true that Wm. D. Hardin is the brother of respondent, and that he did owe Mr. Ware about ten thousand dollars in Crittenden county scrip, or treasury warrants, which he, the said William, has since paid to respondent for the estate. But this respondent doth flatly deny that said William D. Hardin fraudulently procured the appointment of this respondent for the purpose either of cheating, defrauding, hindering, or delaying the heirs of said estate, or the speedy administration of the estate. But, on the contrary, respondent states and now declares that he received his
292 appointment in good faith, has acted, and will act, in good faith, and will wind up and settle the estate in very shortest time that the same can be done.

Respondent denies that he is an improper person to be administrator, but avers that he is a suitable person, and so thought the probate court.

Respondent denies that his appointment is or was void, and denies

that he would not be able to settle the matters of said estate without the assistance of compl'ts.

And respondent denies that said complainants are in danger of losing anything on account of his said administration, and now here again he repeats that if his bond is not sufficient he will make it sufficient.

Respondent denies that any or all of his acts are contrary to equity and good conscience, and tend to the manifest injury of complainants.

Respondent again avers that an administration was necessary in Arkansas, to the end that the debts due the estate might be collected and the contract or contracts of said Ware might be executed.

Respondent, further answering, states he flatly denies all fraud or intention of fraud, combination, or fraudulent design, and prays this honorable court to dissolve the injunction in this
293 cause and allow respondent to proceed with his said administration, and that he be hence discharged with his reasonable costs.

BROWN & LYLES,
Sol's for Defendant.

STATE OF ARKANSAS, *County of Crittenden:*

I, L. B. Hardin, defendant in the foregoing answer, do solemnly swear that the facts, statements, matters, and things set up in said answer are true to the best of my knowledge, information, and belief, so help me God.

L. B. HARDIN.

Sworn to and subscribed before me, this 23d day of October, 1872.
JOHN SWEPSTON, *Clerk.*
By S. P. SWEPSTON, *D. C.*

Endorsed: Filed Oct. 23, 1872. John Swepston, clerk, by S. P. Swepston, D. C.

Motion to Dissolve Injunction.

294 STATE OF ARKANSAS, *County of Crittenden:*

In Circuit Court of said County. In Chancery, Oct. 1872.

J. J. WARE *et als.*, Plff's, *vs.* L. B. HARDIN, Def't.

And the defendant having both answered and demurred in this cause, now moves the court for a dissolution of the injunction in this cause.

BROWN & LYLES,
For Def't.

Endorse-: Filed Oct. 23, 1872. John Swepston, clerk, by S. P. Swepston, D. C.

Motion to Dismiss.

In Crittenden Circuit Court.

J. D. WARE ESTATE *v.* L. B. HARDIN, Adm'r.

And on this day comes the defendant, L. B. Hardin, and moves the court herein to dismiss this cause from this court because
295 he says that this court has no jurisdiction to determine any questions at issue in said cause, because he says—

1st. That the appeal was not taken pursuant to law.

2nd. That no order granting said appeal was made by the court below.

3rd. That no affidavit for an appeal was made and filed.

4th. That no bond for an appeal was given by him, the appellant.

5th. Because no error was assigned in the decree of the court below.

6th. Because the requirements of the decree of the court below were carried out and observed, as appears from the transcript of the record filed.

BROWN, LYLES & BRYANT,
For L. B. Hardin.

296 *Record Entries.*

J. J. WARE *et al. vs.* L. B. HARDIN, Adm'r.

On this day in this cause motion to dissolve injunction filed, and continued to next term.

Also, at same term, the following order:

J. D. WARE
vs.
L. B. HARDIN. } 379. Chancery, 269.

On this day in this cause continuance set aside and bill dismissed.

L. L. MACK, *Judge.*

In case 780. Appeal from Probate Court.

WARE
vs.
HARDIN. } Law, 200.

Last order continued until next term.

297 J. J. WARE *et al.*, Pl'ffs, *vs.* L. B. HARDIN, Def't.

And now, on this day, upon original and demurrer, the injunction in this cause is modified to the following effect; that is to say: Upon the filing in and approval by the probate court of this county, or by the judge of said court, a proper and sufficient bond as administrator by the defendant, L. B. Hardin, he may proceed to collect and hold the debts due the estate, but he is restrained from making

any improper disbursements of the money or county warrants of said estate until the further order of this court made in this cause.

Ordered that court adjourn until court in course.

MARSHALL L. STEPHENSON, *Judge.*

24th Oct. 1872.

Ch'y record, page 145.

And on March 6, 1884, as follows:

298 BLAND P. BOYD *et al.* } 450.
v.
WILLIAM D. HARDIN *et al.* }

On this day come the plaintiffs, by U. M. & G. B. Rose, their solicitors, and also comes said defendant, William D. Hardin, by O. P. Lyles, his solicitor, and said William D. Hardin files here his supersedeas bond, which is approved, and it is ordered that said bond be filed now for then as of the date of January 1, 1884, and that it shall operate as a supersedeas herein; and it is agreed by counsel that this cause shall be submitted in the Supreme Court of the United States at the next term under the 20th rule, in order to have a speedy deposition thereof.

Which bond is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Arkansas, at Little Rock. In Chancery.

BLAND P. BOYD, as Administrator of the Estate of Jno. D. Ware, dec'd, Emma Ware, J. L. Lett and Mary N. Lett, his wife; J. P. Moses and Sue Moses, his wife, Complainants,

vs.

WILLIAM D. HARDIN & his wife, LIDA C. HARDIN; JOHN MURRAY and JAMES MURRAY, Defendants.

299 Know all men by these presents, that we, William D. Hardin, as principal, and Asa Hodges, as surety, both of Crittenden county, Arkansas, are held and firmly bound unto the said Bland P. Boyd, as administrator aforesaid, in the penal sum of one thousand dollars, in good and lawful money of the United States, to be paid to the said Bland P. Boyd, as administrator aforesaid, or to his legal representatives, and to which payment, well and truly to be made, we bind ourselves, our heirs and administrators, and every of them, firmly by these presents.

Signed and sealed the 5th March, the 1884.

And now the condition of the above obligation is such that whereas the above-bound William D. Hardin had a judgment and decree rendered against him on the 6th day of December, 1883, in the chancery side of the above-named United States circuit court, then in session at Little Rock, for the sum of ($17,150.00) seventeen thousand one hundred and fifty dollars, and in favor of said Bland P. Boyd, as administrator aforesaid of the estate of Jno. D. Ware, deceased, and from which judgment and decree the said William D.

Hardin, on the said 6th of Dec., 1883, prayed and was granted an
300 appeal to the Supreme Court of the United States of America; and now, if the said William D. Hardin, the appellant, shall prosecute to effect his said appeal and make his plea good, and shall answer all damages and costs, then the above obligation shall be of no effect.

WILLIAM D. HARDIN. [SEAL.]
ASA HODGES. [SEAL.]

Endorsed: Filed March 6, 1884. Ralph L. Goodrich, clerk.

301 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth.

[SEAL.] RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 886. William D. Hardin, appellant, *vs.* Bland P. Boyd, administrator of John D. Ware, deceased; Emma Ware, J. L. Lett and Mary N. Lett, his wife, J. P. Moses and Sue Moses, his wife. Filed July 24th, 1884.

113-756

FILED.
OCT 14 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

B. P. BOYD as Admr. ET AL.

vs. } Appeal from U. S. Circuit Court, Eastern District of Arkansas.

W. D. HARDIN ET AL.

BRIEF FOR APPELLANTS.

B. C. BROWN,
THOS. M. PETERS and
O. P. LYLES,
Solicitors for Appellants.

S. C. TOOF & CO. PRS. & LITHS., MEMPHIS

In United States Supreme Court.

B. P. BOYD AS ADMR. ET AL.

VS. } APPEAL FROM U. S. CIRCUIT COURT, EASTERN DISTRICT OF ARKANSAS.

W. D. HARDIN ET AL.

1. This suit grows out of a contract for sale of certain lands in Arkansas between Ware and Hardin, as shown in Ware's title bond of March 28, 1871. If the parties were competent and there was no fraud, then the recital in the contract estops both parties to it and their privies. The proofs show there was no incompetency and no fraud.

1 Greenleaf on Ev., sec. 23.
Miller v. Hampton, 37 Ala. 342.
Carr v. Jackson, 4 Peters 1.
Spriggs v. Bank Mt. Pleasant, 12 Peters 257.

2. The first installment then was duly paid ($10,000.) The bond of March 28, 1871, shows this. This bond is witnessed and acknowledged for record and admitted to record. This record is almost semi-judicial. It proves the receipt and release of the first installment of $10,000.

Gould's Digest, p. 267. Record of Deed.
Gantt's Digest, sec. —. Record of Deed.
Hardin's dep., printed transcript 71.

3. The chancellor's decree omits to claim it, that is, the first installment of $10,000. The second installment of $10,000 was paid to the administrator of Ware after his death. This is proved by W. D. Hardin's deposition and the deed of Ware's administrator to W. D. Hardin ordered to be made by decree of the judge of the probate court of

Arkansas (Crittenden county), as appears in the record of that decree or order, and the deed of the administrator of Ware to W. D. Hardin. (See the record and Hardin's deposition.) The execution of this deed by the administrator of Ware to W. D. Hardin by order or decree of the probate court is a *judicial* proceeding in that court under the laws of Arkansas, just as it would have been on proceedings for specific performance in a like case in a court of chancery, and its effect is the same; and the administrator's deed unimpeached vests the vendor's title in Hardin the vendee against the vendor, his heirs and privies. And the administrator's deed is evidence of Hardin's title just as if it had been made by the vendor himself. It proves as between the vendor and vendee ALL THE FACTS RECITED IN IT. It recites the payment of the second installment of $10,000, and this is an estoppel.

Cromelin v. McCauley, 67 Ala. 542.
Kerr on Frauds, 353. Gould's Dig., p. 135.
Gantt's Dig., p. 179. 2 Black 732.
Goodletts v. Hansell, 66 Ala. 151.
Carver v. Jackson, 4 Pet. 244, 333.
Van Renselaer v. Henning, 11 How. 297.
Crane v. Mores, 6 Pet. 598.
Sprigg v. Bk. Mt. Pleasant, 12 Pet. 257.

4. The proceeding in the probate court to perfect Hardin's title is the judgment of a court of plenary and exclusive jurisdiction. As evidence it is conclusive if there is no fraud. If it should be considered otherwise it would impose great risk on administrators and vendees after long delays and all the witnesses to the payment are dead or gone to parts unknown, when the parties claiming an interest come to force payment of the same funds out of the vendee, with destructive sums of interest added. The question of fraud in the contract of sale is abandoned in the chancellor's decree, and the bill is not an attack on the proceedings on the order or decree for title in the probate

court. But it affirms the validity of the contract of sale of March 28, 1871, and attempts to give it the force of a vendor's lien. To this there are two objections: one is, the debt is paid; and the other is that the debt and the lien are both barred by the statute of limitation of ten years.

W. D. Hardin's dep., p. 71.
Probate Court's order for deed.
L. B. Hardin's administrator's deed, p. 9.
Beemie v. Main, 29 Ark. 591.
State Bank v. Wilson, 6 Ark. 156.
Gantt's Digest, sec. 4113.
Martin v. Campbell, 1 Tenn. 137.
Lupton v. January, 13 Pet. 381.

5. When the bill shows that it is obnoxious to the statutes of limitation, it shows that there is *no right*, there is *no equity*.

Underhill v. Mobile F. Dept. Co., 67 Ala. 45.

6. The records of the probate court of Crittenden county, Ark., may have been indifferently kept in 1872, but this would not void the decree or orders after they were approved by the judge of the court. Here the record shows a proper decree and a proper action under it, in a case where the court had jurisdiction. The contrary is not proven or pretended. This is conclusive.

W. D. Hardin's dep., printed transcript 71.
Record of the order for deed, 23.
Administrator's deed to W. D. Hardin.
Gould's Digest, p. —. (Specific Performance.)
Gantt's Dig., sec. —. (Specific Performance.)

7. Hardin and Mrs. Hardin offer this decree and the deed made under it for title to the lands sold to Hardin on March 28, 1871, as proof of his right and her right. This is a judgment of a competent court on a matter within its jurisdiction. This is conclusive, and it shows title in Hardin, and of course payment of the *last installment* of the

purchase money. The first is abandoned in the chancellor's decree. This shows the whole payment of the purchase money.

Hopkins v. Lee, 6 Wheat. 26.
Voorhees v. Brus, 10 Pet. 449.
Lyon v. Velum, 21 Ala. 234.
Trustee Ala. Nur. v. Kellar, 1 Ala. 406.

8. If the purchase money was paid—and the proof is it was, and there is no proof to the contrary—then this decree of the probate court for title does the plaintiff no damage, and they cannot complain. Fraud and damage must concur before there is a case for relief. The irregularity of the record, if there is any, does not change the decree for title.

Overdee et al. v. Wiley, Banks & Co., 30 Ala. 709.

9. The title bond shows that the balance of the purchase money was to be paid in chattels. In such case the decree must be for the value of the chattels at the time. Plaintiff's proof shows that county scrip was only then worth 15c in the dollar, and the decree as a money decree should not exceed $5000. It is more than double what it should be.

3 Parsons on Contracts, 215–216, and cases there cited.

10. Mrs. Hardin's answer offers a good defense. It is fully proven by W. D. Hardin's deposition. Marriage is a sufficient consideration to support a settlement on a wife.

Maguire v. Thompson, 7 Pet. 348.
Henry v. Arden, 1 Johns. Ch. 261.

11. The Tennessee administrator and the heirs of Ware could not sue jointly. If one fails, all fail.

3 Ala. 747. 4 Tenn. Rep. 510.
7 Cranch 157. 1 Littsell Cos. 436.
3 Mart. 554. 55 Ala. 525. 35 Ark. 556.
37 Ark. 643. 34 Ark. 63. Ib. 391.

12. In the court below there was no objection to any of the witnesses for competency or to any of the documents or other evidence on either side. It was all let in without objection. It is too late to make such objection here. If then the whole evidence be carefully noted and intelligently criticised it fails to show any such mental weakness on the behalf of Ware or any such fraud on the part of Hardin as would overturn the validity of the sale of the lands by Ware to Hardin on March 28, 1871. This conclusion is affirmed by the chancellor's decree. Then the only question that remains is, Was the purchase money paid? The contract of March 28, 1871, is a confession that the first $10,000 was paid, and the proof shows that the second $10,000 was paid. This is the defendant's proof, and there is no proof to the contrary.

W. D. Hardin's dep., printed page 71.
Ware's title bond of 28th March, 1871, printed p. 5 of transcript.
L. B. Hardin's admr's deed to W. D. Hardin.
Probate court's order for this deed.
A. Hodges' dep., printed transcript, p. 69.
Berkshire's dep., " " " 63.
Dr. Grigsby's dep.
Records of probate court of L. B. Hardin's administration of Ware's estate, printed transcript, p. 8.

13. The amendment allowed by the chancellor in the prayer of the original bill after the trial had commenced was improper. The amendment made a *new case*, and was repugnant to the prayer of the original bill. The original bill was for a cancellation of the sale, and the amendment was to enforce it. It deprived the defendant Hardin of the opportunity of showing upon the NEW ISSUE thus presented that the whole purchase money was fully paid. The question of payment VEL NON had been presented in the original bill as an evidence of fraud. This he had

fully met. The relief in the two cases is not PRECISELY THE SAME.

Shields v. Barrow, 17 How. 130.
Waldron v. Bradley, 14 Pet. 156.
Sneed v. McCall, 12 How. 407.
Story Eq. Pl., sec. 256.
Lehman et al. v. Meiger, 67 Ala. 396.
Micou v. Askhert, 55 Ala. 607.
1 Daniel's Ch. Pr. 328–385.
Rives v. Walthall, 38 Ala. 329.

14. The application for new trial or rehearing should have been granted. The bill was dismissed and no new suit was brought within a year after dismissal. The dismissal was a bar. Gould's Digest, p.

15. The application for a new trial or rehearing possibly does not come upon this appeal, but it shows that the plaintiffs have always been in the wrong, and that they never had any case in court that they did not abandon, and it strengthens the position that the whole debt for the land was long since duly paid, and plaintiffs well knew it.

There being an administration in Arkansas, the Tennessee administrator had no right to sue to foreclose a vendor's lien or for any other purpose. See

Gibson, Admr., v. Ponder, 40 Ark. R. 195.
Story on Confl. of Laws, secs. 512, 513, 514, 515.
Goodwin v. Jones, 3 Mass. 514.
Shegog v. Perkins et als., 34 Ark. 133.
Jacks v. Adair, 31 Ark. 625.

The order of the probate court on the Arkansas administrator to make the deed to appellant is found in the Revised Statutes of Arkansas by Gantt, and is as follows, to-wit:

"Sec. 189. When any testator or intestate shall have "entered into any contract for the conveyance of lands and

"tenements in his lifetime, which was not executed and "performed during his life, and shall not have given power "by will to carry the same into execution, it shall be law- "ful for the executor or administrator of such testator, or "intestate, with the approval of the court, in term time, "to execute a deed of conveyance of and for such lands, "pursuant to the terms of the original contract; such exe- "cutor or administrator being satisfied that payment has "been made therefor, according to the contract, and recit- "ing the fact of such payment to the testator or intestate, "or to such executor or administrator, as the case may be, "which deed may be acknowledged and recorded as other "deeds, and shall have the same force and effect to pass "the title of such testator, or intestate, to any such lands "as if made pursuant to a decree of court."

Act Feb. 21, 1859.

B. C. BROWN,
THOS. M. PETERS,
O. P. LYLES,
Solicitors for Appellants.

ASSIGNMENT OF ERRORS.

W. D. HARDIN ET AL., Appellants, } In U. S. Court,
vs.
B. P. BOYD AS ADMR. ET AL., Appellees. } Term 1884.

The appellants come by their solicitors and assign the following errors committed in the court below, and respectfully ask that the same be reviewed and corrected:

1. The court below erred in refusing the motion to dismiss.

2. The court below erred in refusing to sustain the demurrer.

3. The court below erred in failing to sustain the plea of the statute of limitation of ten years.

4. The court below erred in decreeing for the plaintiffs and not for the defendants, Hardin and Wife.

5. The court below erred in decreeing for Bland P. Boyd as the administrator of the estate of J. D. Ware, deceased, as appears in the decree in the court below.

6. The court below erred in decreeing a foreclosure of the vendor's lien against Hardin, as is shown in said decree.

7. The court below erred in decreeing against evidence for the defendants, Hardin and Wife.

8. The court below erred in failing to decree in favor of Mrs. L. C. Hardin and dismissing the bill as to her and her children.

9. The court below erred in failing to decree in favor of the defendant, Wm. D. Hardin, and dismissing the bill as to him.

10. The court below erred in permitting the amendment of the prayer of the original bill against the defendant Hardin's objection, after the trial had commenced, as is shown in the record.

11. The court below erred in decreeing against the weight of evidence in favor of defendants Hardin and his wife, Mrs. L. C. Hardin.

12. The court below erred in decreeing against the law arising on the facts as presented by the record.

13. The court below erred in refusing the application for a new trial.

All of which is most respectfully submitted for correction.

B. C. BROWN,
THOS. M. PETERS AND
O. P. LYLES,
Solicitors for Appellants.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY
CLERK

113-756

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884. No. 886.

WILLIAM D. HARDIN, Appellant,

v.

BLAND P. BOYD, Administrator of John D. Ware, deceased; EMMA WARE, J. L LETT and MARY N. LETT, his wife; J. P. MOSES and SUE MOSES, his wife.

Appeal from Circuit Court of the United States.

FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLEES.

Mitchell & Bettis, Printers and Binders, Little Rock, Ark.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884. No. 886.

William D. Hardin, Appellant,

v.

Bland P. Boyd, Administrator of John D. Ware, deceased; Emma Ware, J. L Lett and Mary N. Lett, his wife; J. P. Moses and Sue Moses, his wife.

Appeal from Circuit Court of the United States.

FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLEES.

The appellees filed their bill in the court below against the appellant, his wife, Lida C. Hardin, and certain tenants in possession, in which they set forth the following facts:

The appellees, as the administrator and heirs at law of John D. Ware, deceased, being citizens of Tennessee,

where said Ware lived and died, alleged that on the 28th day of March, 1871, said Ware executed a bond for title to the defendant, W. D. Hardin, which recited that he had sold to the latter an undivided half of the lands in controversy, which lie in Crittenden county, Arkansas; for which Hardin had paid and was to pay $20,000, one-half cash, and the remainder in county warrants of Crittenden county, on the first day of January, 1872. At the time of this transaction the lands were worth at least $15.000. Ware was at that time old and in bad health, not able to attend to business; and he reposed great confidence in Hardin, who was a man of excellent capacity, and was dishonest, though the latter fact was not suspected by Ware. Hardin, knowing that said Ware must soon die, had resolved to cheat him out of the lands; and so he deceived him by telling him that the warrants were worth seventy-five cents on the dollar of their face value, when in fact they were not worth more than ten cents on their face value. Hardin did not pay the $10,000 in cash as he had agreed to do; but only paid $5,400 in depreciated warrants; saying that he would get the rest of the warrants at an early day, and would deliver them to Ware, which he never did; nor did he ever pay anything further on the purchase money, but he went into possession, and has so remained ever since. Ware died on the 6th day of December, 1871. Boyd, one of the appellees, sued out letters of administration on his estate in Tennessee. Hardin, in order to carry out his fraudulent scheme, induced his brother, Lucian B. Hardin, to sue out letters on his estate from the probate court of Crittenden county, Arkansas. By collusion with his brother, W. D. Hardin obtained

from the probate court an order of allowance of a debt in favor of himself against the estate of Ware in Arkansas for $2,333.65, which allowance was made on the 30th day of July, 1872. The debt was wholly fictitious. The estate did not owe Hardin anything; but he owed the estate for the unpaid purchase money on the lands for which he had got the bond for title. The fraudulent device of W. D. Hardin was productive of a false order of the probate court, dated January 15, 1872, which recited the purchase of the lands by W. D. Hardin, and that he had paid his brother, as administrator of Ware, $10,000 in warrants, on the lands, the payment having been made on the first day of January, 1872; upon which the court apparently directed the administrator to execute a deed for the lands to W. D. Hardin. This order was never made by the probate court. It was written on three and one-half sheets of letter paper, and was in the handwriting of one Bryant, who was the attorney of W. D. Hardin; and these sheets were pasted between the leaves of the record of the probate court. Under this pretended order, L. B. Hardin, as administrator of the estate of Ware, executed a deed conveying the lands to W. D. Hardin. On the 10th day of July, 1877, W. D. Hardin conveyed the lands to his wife. The warrants, if any, that came to the hands of L. B. Hardin, as administrator of Ware, were sold by him at fifteen cents on the dollar, and the money arising was paid over on the fraudulent claim that had been allowed in favor of W. D. Hardin. L. B. Hardin, as administrator, also had in his hands a claim against one Cunningham for $1,100, and the money arising from it was also paid on that fraudulent

allowance, excepting a balance which was paid to said Bryant for his fee in attending to the matter relating to these fraudulent proceedings. On the 27th day of March, 1873, L. B. Hardin filed his first annual settlement as administrator of the estate; and on the same day he also tendered his resignation, which was accepted by the probate court; and on the written application of W. D. Hardin, his attorney, Bryant, was appointed administrator in his stead; and the latter was directed to give bond as administrator *de bonis non*, in the penal sum of $4,000, which he failed to do, but qualified without giving any bond at all. No papers relating to the administration remain in the office of the clerk of the probate court. W. D. Hardin was clerk of that court from January 28, 1873 till January 4, 1875; and during that time he destroyed the papers for the purpose of concealing the evidence of his fraud. The annual value of the rents have been about $800 per annum.

PRAYER.

"For the frauds aforesaid, your orators pray that the said bond for title, and the said deed made by Lucian B. Hardin to the said William D. Hardin, and by the latter to the said Lida Hardin, his wife, may be set aside for fraud; that an account may be taken of the said rents and profits, and of the value of the county warrants delivered by said William D. Hardin, *and that your orators may have a personal decree against said defendants for any balance that may be justly due to them;* that a decree may be rendered quieting the title of the plaintiffs herein to said lands

against all claims of the said defendant, and for such other relief as equity may require."

At the hearing, by leave of the court, the plaintiffs amended the prayer by inserting the following words:

"Or, if thought proper, that the court may give a decree for the purchase money due on said lands, and that the plaintiffs be decreed to have a lien on said lands for the payment thereof, and that said lien be foreclosed."

Never in any case, perhaps, was fraud made more apparent. The evidence was overwhelming. The court found that Hardin, in addition to the various frauds committed by him, in which he was aided by his brother and a disreputable attorney named Bryant, had never paid for the land; and the court decreed in favor of the plaintiffs for an unpaid balance of the purchase money, made it a lien on the land, and directed a sale of it.

The deed made by W. D. Hardin to his wife, purported to be based on a consideration of $10, and natural love and affection. (Rec. 30.)

The answer of W. D. Hardin denied the incapacity of Ware, and all the charges of fraud. It is remarkable that the answer, although it contained frequent and vehement denials of the allegations of fraud, did not give the least explanation of the remarkable transactions set up in the bill. It simply said that the probate court had made an order for the conveyance of the land, and had allowed the claim of the defendant for $2,333.65; and that the defendant relied on this order as a judgment of a court of

competent jurisdiction. The defendant also asserted that he had paid the purchase money in full. (Rec. 40-1.) This defendent also interposed the plea of the statute of limitations, and a demurrer to the bill.

Mrs. Hardin also answered, asserting that before her marriage her husband had promised her that if she would marry him he would convey to her his lands in Arkansas; in consideration of which she did marry him, and so the deed to her was accordingly made. She also pleaded limitation and demurred.

It appears that on the 20th day of February, 1872, some of the plaintiffs had filed in the probate court a petition to have L. B. Hardin removed from his position as administrator, and that their motion was denied. On the 30th day of August, 1872, the administrator had reported to the probate court that he had on hand $10,000 in county warrants, and he got an order to sell them at public or private sale.

On the 20th day of January, 1873, the administrator filed his first annual settlement, and also his resignation; and he was discharged as such administrator, and from all liability on his bond.

On the same day Bryant was appointed administrator in his stead. The proceedings were all ex-parte.

An appeal having been taken from the order of the probate court refusing to remove Hardin, as administrator, it was dismissed May 23d, 1866. (Rec. 76.)

The petition of L. B. Hardin for the conveyance of the lands to his brother, recited the payment of the $10,000. It has no file mark on it, and is not dated. (Rec. 30.)

It is to be observed that on the same day that the allowance was made in favor of W. D. Hardin, an order was entered directing the administrator to sell $10,000 worth of Crittenden county warrants. (Rec. 67.)

This order, like every other step in the proceedings, was a fraud. The law did not admit of any private sale. The statute says:

"The personal estate of deceased persons shall not be sold, unless the same be ordered by last will and testament, or by direction of the court; and when so ordered or directed, the executor or administrator shall sell the same *at public sale*, giving such credit as he may deem most advantageous to the estate."

Rev. St. Ark., 1874, Sec. 73.

All the testimony went to show that W. D. Hardin was an exceedingly shrewd, unscrupulous, dishonest and rapacious man. Not a word is to be found in his praise from one end of the record to the other. His character is well summed up by the witness Smith, who says:

"I looked on Mr. Hardin as an exceedingly active, cunning man, and always on the lookout for a dollar. I do not mean to say that Mr. Hardin was systematical and methodical in his business; but if there were any cross roads he generally took them." (Rec. 95.)

As not unfrequently happens, the very means taken to make the fraudulent device successful, only served to show its fraudulent character. Thus it was not until the 15th day of January, 1872, that an order was made by the probate court for the issue of letters to L. B. Hardin. (Rec. 58.) But L. B. Hardin reported to the court that the purchase money on the lands had been paid to him as administrator on the first day of January, 1872, just fifteen days before he was appointed administrator, and hence at a time when he had no authority to receive it. (Rec. 76-7.)

For the rest, the testimony discloses such a clear case of deliberate fraud, long persisted in on the part of W. D. Hardin, his brother, and their attorney, as has hardly ever stained the records of any court of justice.

The testimony as to the capacity of Ware is, as usual in such cases, somewhat conflicting. J. F. Smith says that he was a good business man, though aged and infirm; but he says that he did not know him intimately. (Rec. 95.) Emma Ware says that he was ill and not able to attend to any important business. (Rec. 133.) G. P. Ware says that he was in very feeble health, and that his mind was much impaired, and that he was entirely unable to attend to any business transactions. (Rec. 144.) Dr. Haywood, the attending physician of Ware during his last illness, says that "he was very much debilitated, and a great sufferer from the beginning." Meaning the beginning of his illness, which was of some months duration. He further says that "his mind was impaired in sympathy with his body;" and that his mind was so impaired and debilitated from his sick-

ness that he might be imposed on. He further says, " I do not mean that he was an imbecile ; but from his illness he was to a certain extent incapacitated from attending to business." Also that Ware " often acted strangely and answered questions in a confused manner. I do not think that he was a crazy man, or an imbecile ; but I think there was a physical wearing out, and his mind was not right. I thought from the time he went home his mind was not right."

Other witnesses gave different opinions ; but it is to be noted that they speak in a general way, not with reference to any particular time ; and that those who speak of the vigor of his mind are not for the most part those who were intimately acquainted with the deceased.

This question has turned out however, to be one not of controlling importance. Testimony was unearthed showing, that W. D. Hardin acted fraudulently in the whole transaction ; and one cannot believe that he would have been guilty of the acts which he committed but for his knowledge of the fact that his victim was old, sick, and dying by inches from day to day, in consequence of which facts the chances of detection were greatly lessened.

It is clear that the debt claimed to be due from the estate of Ware to W. D. Hardin was a false and simulated one ; and that in making the affidavit necessary to procure its allowance by the Probate Court, Hardin swore knowingly a falsehood.

G. P. Ware says that in 1871 W. D. Hardin said that

he would come up in a few days and bring some money for J. D. Ware. (Rec. 148.)

Bland P. Boyd says that after he qualified as administrator of J. D. Ware in Tennessee, he found among the assets of the estate a due bill on W. D. Hardin for $510.25. When it was presented to the latter for payment, he did not claim that the estate owed him anything; but promised to pay it; but failing to do so, the administrator sued him, and got judgment. Witness had had frequent conversations with W. D. Hardin about the business of the estate; and the latter had never claimed that the estate owed him anything. (Rec. 149–153.)

When W. D. Hardin gave his testimony for himself, he said nothing about this claim on his examination in chief. When asked on cross-examination about the matter, he gave the following self-convicting account of his supposed debt:

"Interrogatory 25. Look upon Probate record book "D" 438, and say what was the nature and character of the account exhibited by you against the estate of the said Ware, and by the court allowed, and classed in the 5th class, for the sum of $2333.65? State fully as to the items of said account, and, if you have a copy thereof, exhibit the same with your deposition."

"Answer. It has been so long that I have almost forgotten; but to the best of my knowledge, it was in money that I spent while he and I were farming together, for supplies in paying hands, and that I had loaned Mr.

Ware, and for a horse, saddle, bridle, and gun. A part of the Cunningham note, collected by C. W. Bryant, as attorney, and transferred to me by C. W. Bryant, and the biggest portion of the cotton shipped by J. D. Ware of crop of 1869, to Farrington & Howell to his credit. My memory don't enable me to make a more accurate statement of the items. At the time the account was made out it was correct, and approved by the court. I have no copy, and my recollection will not enable me to made one."

True to the repetitions in the answer, Hardin still relied on the fraudulent orders that he had obtained from the Probate Court as being an end to all controversy. Hardin was a business man, and must have kept books; and yet this is all the account which he can give of a claim on which he had got a judgment for a considerable sum of money. He says that a portion of the debt was, "a part of the Cunningham note collected by C. W. Bryant, as attorney, and transferred to him by C. W. Bryant."

The Cunningham note belonged to Ware, and passed to L. B. Hardin as his administrator. How could a collection of any part of that note, and the turning over the proceeds to W. D. Hardin bring Ware's estate in debt to him? The statement only shows that the charge made in the bill that Bryaut as attorney for L. B. Hardin, as administrator of Ware, collected the money on the Cunningham note and turned a part of it over to W. D. Hardin in payment of his fraudulent claim, is true. W. D. Hardin states the same thing; but bewildered by the incoherence of his fraudulent acts, he tries to make it appear that a payment of money to

him by the attorney of Ware's administrator, and of himself, brought Ware's estate in debt to him.

When the depositions were all published and compared, it became apparent that W. D. Hardin had never paid the purchase money on the lands. Hardin himself did testify that he had paid all of it, but under the statute his testimony goes for nothing.

Rev. St. Sec. 858.

His statements were also disposed in a great variety of ways.

The only money paid by Hardin was $5400, in county scrip, left in an envelope in the safe of Howell in Memphis. See Dep. of Boyd. (Rec. 151.) Hardin had falsely stated that the envelope contained $10,000, the first payment on the lands in full. See Dep. of Miss Emma Ware. (Rec. 132.) The envelope was marked as containing $4940.53 in county scrip. See Dep. of Howell. (Rec. 93.) This scrip was not paid to Ware, but was delivered to Boyd, his administrator, after the death of Ware. See Howell's deposition. (Rec. 93.) Also deposition of Boyd. (Record 151.) Hardin attempts no explanation of this matter, but swears flatly that he paid Ware himself $10,000. (Rec. 192.)

In accomplishing his frauds Hardin made use of his brother, L. B. Hardin, and of Bryant.

As for Bryant, his conduct and association, as they appear in this case, serve to stamp the man. Even Berkshire, a very swift witness for the defence, says: "I think he was an unscrupulous man." (Rec. 175.)

W. D. Hardin was not only dishonest, but he belonged to that class of dishonest men who are vain of their dishonesty. Having committed these gross frauds, he went to Barton and boasted of them; partly explaining the methods by which they had been accomplished. (Rec. 35.) In his deposition Hardin did not deny the statements of Barton; nor did he deny any of the statements made by the other witnesses showing conclusively that he had obtained the title to the land by fraud. His examination in chief is a marvel in its way. Taking refuge in generalities and broad denials, he carefully abstained from all details.

The answer of Mrs. Hardin was not sworn to, and there is no reason to think that she ever saw it. The taking of the deposition of W. D. Hardin was distinguished by a proceeding that, so far as we know, or have ever heard, or read, has never had a parellel. While he was being examined in chief, it was observed that he kept his eyes intently fixed on a paper that he held in his hand. On his cross examination he was asked what that paper was; and he was requested to attach it as an exhibit to his deposition. This was done, and the paper is contained in the transcript. (Rec. 217.) This document the witness stated was in the handwriting of his solicitor. (Rec. 210.) It was a deposition written out for the witness, giving explicit answers to every question asked him in chief. Comment is unnecessary.

This deposition, thus written out beforehand by the solicitor of Hardin, contained the following:

"When I was courting my present wife, said Lida C. Hardin, I told her if she would marry me that I had a good home, and would settle it on her after our marriage; and upon this promise she married me; and after I was married I conveyed said lands to her, in performance and execution of said promise. And deed of 1873, and of July 1877, was founded on this consideration, and are valid." (Rec. 223.)

Whether he was afried to make this statement from fear of detection, or some other reason, Hardin did not include it in his deposition. In that he said nothing about this marriage promise set up in the answer of his wife; and thus the efforts of the local solicitor to get a perfect deposition out of his client, and one that would cover the whole case as made by the pleadings, proved to be abortive. In his deposition Hardin made no attempt to explain how and when the pretended order for the making of a deed to him by his brother was inserted in the record book of the Probate Court in the handwritting of Bryant. Indeed, as we have said, he made no effort to state facts with any kind of detail that would admit of investigation or contradiction.

The active parties in the prosecution of this suit are four ladies; three of whom are married, living remote from the scene of Hardin's operations. The taking of the testimony disclosed many frauds on the part of Hardin which neither they nor any one not divinely inspired could have suspected at the time the bill was filed. No one could have seen the depth, variety and complication of the wrongs of which he had been guilty. What purported to be a record showed the payment of the scrip to L. B. Hardin, and its

subsequent sale by Hardin. Though the bill put the payment of the scrip distinctly at issue, yet the probability of proving that fact distinctly at the time it was filed must have appeared to be hopelessly small. Perhaps no one had ever known the facts, save L. B. Hardin and W. D. Hardin and Ware; and all of these were dead except W. D. Hardin. No doubt Bryant knew a good deal about the fraud; but he was a participant in it, and he had left the country. The evidence showed that all the allegations of fraud contained in the bill were not only true, but that the pretense of Hardin that he had paid the purchase money on the land was also a falsehood.

With one exception there was not left a single paper on file in the Probate Court relating to the administrations of L. B. Hardin and of Bryant. (Rec. 106.) W. D. Hardin had been clerk of the court for two years. The single paper which was not lost was a petition of L. B. Hardin to make a deed to his brother. (Rec. 76.) This was preserved because it was a muniment of the title claimed by W. D. Hardin.

But these were not the only lost papers and records. W. D Hardin swore as follows:

"Said plaintiffs had full knowledge of all the matters stated in their bill from the death of said Ware. They once filed a bill in the Chancery Court of said county of Crittenden for the same. It is lost from the records of said court, and cannot be produced. They suffered the same in 1876 to be dismissed without paying cost, and

never renewed it. This was done in the year 1876; this was not long after the said Ware died; and was approved by the court." (Rec. 221.)

After the final decree W. D. Hardin "casually found" these papers, as we used to say in trover, and made them a ground for a petition for a rehearing. (Rec. 232.)

W. D. Hardin says that he went to Tennessee for the purpose of seeing Ware, early in December, 1877, in order to pay him the balance of the purchase money on the land, and to get a deed. (Rec. 204.) If that had been true, he would have stopped in Memphis, and have gotton the scrip which he had left in the safe of Howell. At that time the balance of the purchase money was not due. He probably went for the purpose of fleecing Ware out of something else of value; but when he arrived at his destination the victim of his cupidity was lying in his house dead. (Rec. 204.) Unimpeded by a single pang of remorse, he straightway formed the plans which he subsequently carried out, having for their object the spoiliation of the children of one who had trusted him as a friend, and who had died believing his false professions of loyality and devotion to be true. It is only by a chain of unexpected disclosures that the proof is made evident and conclusive. The fraud itself lacks no element to make up the full measure of its perfect iniquity. It admits of neither paliation nor excuse. Planned against a dying man, it was persisted in for years; in its accomplishment legal forms were prostituted, and perjury was called in as a convenient ally. It was perpetrated against persons who were to a large extent defenseless. Its

accomplishment was not only attended with turpitude, but with crime as well. The finishing touch was given when the principal defendant attempted to swear his case through the courts by copying a deposition which had been deliberately prepared by his local counsel, with due regard to all points of law and the existing proofs in the cause.

Hardin testified that he had made the last payment to his brother as administrator. With characteristic prudence, he said that he had paid the money or scrip, in the presence of Thomas L. Dougherty, who was dead. (Rec. 210,98.)

Under these circumstances it was clear that the plaintiffs had the right to claim that the contract should be set aside, or to affirm the contract, and to call for its enforcement. This was optional with them. If they had known all the facts when the bill was filed, it cannot be doubted but that they would have elected to affirm the contract, as that would be most for their advantage. A ratification made in ignorance of the facts would not have bound the appellees.

At the hearing, as we have said, the plaintiff asked leave to amend the prayer of the bill by inserting the following words:

"Or, if thought proper, that the court may give a decree for the purchase money due on the lands; and that plaintiffs be decreed to have a lien on said lands for the payment thereof; and that said lien be foreclosed." (Rec. 226.)

The court allowed the amendment to be made, and,

the evidence being conslusive, a decree was rendered in accordance with the amendment.

The only question before this court of the slightest moment is the power of the court to permit the amendment to be made in furtherance of justice.

In the bill it was expressly charged that of the first payment Hardin had only paid $5,400, and that he "never made any further payment." (Rec. 5.) This allegation was expressly denied in the answer. (Rec. 41.) Suppose that it had only been alleged in the bill that the warrants had been delivered to the administrator, and by him sold, and the proceeds paid to W. D. Hardin on his simulated claim, what would that have been but a circumstantial statement that the purchase money had not, in fact, been paid? Evidently the transaction would not amount to a payment. Counsel for appellant say that non-payment was only alleged as evidence of fraud. That is a mere quibble. It was alleged as a substantial fact. Proof was introduced on this point by the defence; the only proof that the case admitted of, according to the theory of the defence, viz: that the first payment was made in full, as set forth in the bond for title, and that the last payment was made by W. D. Hardin in the presence of Dougherty and L. B. Hardin, both of whom were dead. (Rec. 210.) Counsel in this Court say that the proof was fully made out. They do not suggest that any other or fuller proof could be made. It is clear that it could not, because in a petition for rehearing that was filed in the Court below after the decree, no intimation is given that the defence was surprised

by the amendment, or that if the matter were to be gone over again any other or better tostimony could be presented than that now before the Court. It is therefore conclusively shown that if the bill had originally contained only the prayer that was inserted by way of amendment, then the case must have gone off precisely as it did. What the Appellants rely on is a supposed technical rule which must prevent such an amendment, though it is obvious that in this particular case such an amendment must conduce to the proper administration of justice, and that the Appellants could have no plausible ground in equity and good conscience to object to it. According to the argument for Appellant a premium must be placed on the ingenuity which Hardin displayed in accomplishing the frauds complained of. Though these frauds are now obvious in their complete enormity, yet justice could not be done him in this suit; but the Plaintiffs are to be punished because they could not foresee all the proof that would be adduced at the hearing, so as to have their bill correspond with it in every particular. According to that view of the case speedy justice can only be meted out to such awkward tyros in fraud as cannot conceal their dishonesty by a proper variety of cunning devices. In a case like the present it would be necessary to bring one suit to find out the facts, then to dismiss it, and begin a new suit. The delays of the law at present are sufficiently trying and conspicuous; but with this convenient condition annexed it could hardly be supposed that any intelligent person would ever bring a suit like the present, with any hope of profiting from its results; though he might do so with a view to benefit a remote posterity. Where a

point has been put directly in issue, and testimony has been taken on it, and no one has been in the least surprised by the manner in which it has been presented, no one can object to the rendering of such a decree as the proof may justify. To hold otherwise would be to make the Court a rival of the circumlocution office in finding "ways how not to do it."

Mr. Daniel says: "It sometimes happens that the plaintiff, or those who advise him, are not certain of his title to the specific relief he wishes to pray for; it is, therefore, not unusual so to frame the prayer that, if one species of relief sought is denied, another may be granted. Bills with a prayer of this description, framed in the alternative, are called bills with a double aspect. But *it seems* that the alternative prayers must not be founded on inconsistent titles."

Dan. Chy. Pl. and Pr., 384, Ch. VI, sec. 5.

The object of this somewhat dubious rule is of course to guard against that kind of surprise that might work injustice, and not to offer a reward to the ingenuity with which any particular fraud may have been committed; and when the reason of the rule ceases, the rule itself must cease. If it would apply in this case, as it now stands, it must equally have applied if the defence had expressly confessed the non-payment of the purchase money.

There is no pretence that the defence was deprived of any right by the amendment.

The petition for a rehearing made the case far worse for Hardin. As to the payment of the purchase money it

proposed to introduce no new testimony save the inventory and other papers made out by L. B. Hardin. (Rec. 233.) Such papers could add nothing to the acknowledgement of the payment made by the latter in the deed which he executed to W. D. Hardin. Neither would be any evidence as against the appellees; but an additional admission of the same character as one clearly proved, could not be any ground for a rehearing; nor would the testimony, if admissible, in any way strengthen the case for the defense. We have seen that when the suit was brought no paper could be found in the clerk's office relating to the administration of L. B. Hardin, or to that of Bryant, except one that W. D. Hardin was interested in preserving. W. D. Hardin in his answer stated that he did not know whether these papers were lost or destroyed or not, but denied that they had been lost or destroyed by him. (Rec. 49.) It was proved that the papers had been abstracted from the clerk's office. (Rec. 106.) Hardin swore also that the papers in the suit brought in the State court by the appellees had been lost. All these papers are reported in the petition for rehearing as having been found. Who can doubt that W. D. Hardin had them all the time? The loss of the papers and their reappearance are facts which only serve to throw additional light on his peculiar methods.

The present appeal is prosecuted on the theory that as the plaintiffs were not omniscient, and hence could not fathom the perfidy of the principal defendant, the latter, on account of his superior skill in concealment, must have a period of delay that would never be conceded to an honest

but unsuccessful suitor, or to a fraudulent suitor possessed of less astuteness. It was no very easy matter to get possession of facts when the principal defendant had suppressed evidence that should have been accessible to all the world, and had spent years in concealing the traces of his conduct.

The rule contended for by appellant was applied in *Shield v. Barrow, 17 How, 130*, under peculiar and appropriate circumstances. In that case the amendment prayed for the enforcement of the compromise, which would have involved a conveyance of land, and various other things foreign from the scope of the original bill; and which would have involved in all probability, extensive inquiry and controversy. The court considered the amendment as making entirely a new suit; but was careful to show that the rule itself should be properly guarded, and that it is far from being one of universal application. The court said:

"We think sound reasons can be given for not allowing the rules for the practice of the circuit court respecting amendments to be extended beyond this; though doubtless much liberality should be shown in acting within it, taking care always to protect the rights of opposite party.

See Mayer v. Dry, 2 Sim. & Stu. 113.

"To strike out *the entire substance and prayer of the bill* and insert *a new case* by way of amendment, leaves a record unnecessarily encumbered with the original proceedings, increases expenses and complicates the suit; it is far better to require the complainant to begin anew." Page 144.

Certainly this language can have no application to a

case like the present, where the record is not at all incumbered by the amendment, where the substance of the bill is in no wise affected by it, and where the amendment neither increased expenses nor complicated the suit.

In the case of *Mayer v. Dry*, referred to and approved by the court as above, the situation was precisely the same as it is in this case, with the single exception that in that case the facts were all known at the time that the bill was filed. In that case the original bill prayed that a certain deed might be set aside. After the answer came in the plaintiff filed an amendment asking for a decree to enforce the deed. The court allowed the amendment on the payment of costs of the original bill, and of so much of the answer as related to the case made by it, although the court expressly said that all the facts were known to the plaintiff at the time the original bill was filed.

In the case of *Neale v. Neales, 9 Wall. 8*, an objection was urged similar to that urged in this case. But the court said:

"It would seem clear, from the manner in which the court below, of its own motion, and without assigning any reason for this action, gave the complainants leave to amend their bill, that on the original hearing it was satisfied that the evidence made out a case for relief, but a case different from the one stated in the bill; and, that as the pleadings must correspond with the evidence, it was necessary either to dismiss the bill without prejudice, or to give the leave to amend. The court adopted the latter alternative, doubt-

less, with a view to save expense to the parties, and because such a course could not, by any possibility work harm to the defendant.

" It is insisted that this proceeding was erroneous ; that after a cause has been heard, the power of allowing amendments ceases, or if it exists at all, it cannot go so far as to authorize the plaintiff to change the frame work of his bill, and make an entirely new case, although on the same subject matter, as, it is contended, was done in this instance under the leave to amend.

" This doctrine would deny to a court of equity the power to grant amendments after the cause was heard and before decree was passed, no matter how manifest it was that that the purposes of substantial justice required it, and would, if sanctioned, frequently embarass the court in its efforts to adjust the proper mode and measure of relief. To accomplish the object for which a court of equity was created, *it has power to adapt its proceedings to the exigency of each particutar case*, but this power would very often be very ineffectual for the purpose, unless it also possessed the additional power, after a cause was heard and *a case for relief made out, but not the case disclosed by the bill*, to allow an alteration of the pleadings on terms, that the party not in fault would have no reasonable grounds to object to. That the court has this power, and can, upon hearing the cause, if unable to do complete justice by reason of defective pleadings, permit amendments, both of bili and answers, is sustained by the authorities.

"Necessarily, in a federal tribunal *the matter of amendment at this stage of the progress of a cause rests in the sound discretion of the court.* At an earlier stage, the discretion is controlled by the rules of equity practice adopted by this court, but not so upon the hearing, for there is no rule on the subject of amendments applicable to a cause which has advanced to this point. As, therefore, the leave to amend in this instance was within the discretion of the court, we will proceed to dispose of the case on its merits."

In the *Tremolo Patent Case, 23 Wall., 518*, an amendment was made which changed the character of the bill *after final decree*, the cause having been tried, as the cause was tried in this case, exactly as it would have been if the bill had originally been in the amended form. Like amendments were made in *Burgess v. Graffam, 10 Fed. Rep. 219*, and in *Battle v. Mutual Ins. Co., 10 Blatchf., 417.*

In the court below the question was as to whether the amendment would advance the "right of the cause." *Rev. Stat. sec. 954.* But the decree will not be reversed unless the discretion lodged in the lower court was abused. It is obvious that a reversal could only result in a new suit, with its attendant delays and costs, and a similar decree. There is no pretence that all the evidence that can be had in regard to the transaction out of which the suit began is not before the court. To drive the plaintiffs to a new suit would be an unmerited hardship as to them, and would be of no benefit to the other parties.

The appeal was taken by W. D. Hardin. He has

since died, and the suit has been revived in the name of his administrator. What right has the latter to complain? W. D. Hardin had conveyed the lands in controversy to his wife. (Rec. 29, 41.) Admitting the deed to the latter to be fraudulent, as it clearly was, it was still binding on W. D. Hardin, and is equally binding on his administrator.

The petition for a rehearing discloses a singular circumstance in "this strange, eventful history." The appellees had brought a suit in the State court in chancery, alleging that the administration of L. B. Hardin was obtained by fraud; that he was not a proper person to be clothed with the trust, and praying for an injunction to prevent him from further interfering with the assets of the estate. W. D. Hardin was not made a party. It ended with an injunction against the administrator, commanding him not to make "any *improper* disbursements of the money or county warrants of said estate until the further order of this court made in this cause," (Rec. 297;) and this was alleged as a bar of the present suit.

The other points made in the brief for appellant do not seem to require any attention at our hands.

Respectfully,

U. M. ROSE,

For Appellees.

July 30, 1846.	*March* 3, 1857.	*March* 2, 1861.	*July* 14, 1862.	*June* 3, 1864.
9 Stat. at L., 46.	11 Stat. at L., 193.	12 Stat. at L., 185.	12 Stat. at L., 552.	13 Stat. at L., 202.
Schedule D provides that: "Manufactures composed wholly of cotton, not otherwise provided for: 25 per cent.	§2. Provides: "That all manufactures composed wholly of *Cotton* which are bleached, printed, painted or dyed, and *delaines*, shall be transferred to schedule *C*." 24 per cent. * * * *	§ 13. Third paragraph reads: "On all delaines, cashmere delaines, muslin delaines, barege delaines, composed wholly or in part of wool, (worsted) grey or uncolored, and on all other grey or uncolored goods of similar description, twenty-five *per centum ad valorem;* on bunting, and on all (the above when) stained, colored or printed, *and on all manufactures of wool, (worsted) or of which wool (worsted) shall be a component material, not otherwise provided for, thirty per centum ad valorem.*"	§ 9. Provides that: "In *addition* to the duties heretofore imposed by law on the articles hereinafter mentioned and included in this section, there shall be levied, collected and paid on the goods, wares, and merchandise herein enumerated and provided for, imported from foreign countries, the following duties and rates of duty, that is to say." * * * * "On all delaines, cashmere delaines, muslin delaines, barege delaines, composed wholly or in part of worsted, wool, mohair, or goats' hair, and on all goods of similar description, not exceeding in value forty cents per square yard, two cents per square yard. On bunting, worsted yarns, *and on all other manufactures of worsted or of which worsted shall be a component material, not otherwise provided for, five per centum ad valorem.*	That on and after the first day of July, 1864, in *lieu* of the duties heretofore imposed by law, &c., * * there shall be levied, collected and paid * * * the following duties and rates of duty, that is to say: § 5. On women's and children's dress goods; composed wholly or in part of wool, worsted, mohair, alpaca, or goats' hair, gray or uncolored, not exceeding in value the sum of thirty cents per square yard, four cents per square yard, and in addition thereto twenty-five *per centum ad valorem;* exceeding in value thirty cents per square yard, six cents per square yard, and in addition thereto thirty *per centum ad valorem.* On all goods of the last mentioned description if stained, colored or printed, &c., &c. 13 Stat. at L., 208.
In the same act is embraced under Schedule D, the following dress fabrics of mixed material, viz.: *Manufactures of goats' hair or mohair, or of which goats' hair or mohair shall be a component material not otherwise provided for;* *manufactures of silk or of which silk shall be a component material not otherwise provided for;* *manufactures of worsted or which worsted shall be a component material not otherwise provided for,* 25 per cent. 9 U. S. Stat. at L., 46.	In the same act is embraced under Schedule D, the following dress fabrics or mixed materials, viz.: *Manufactures of goats' hair or mohair, or of which goats' hair or mohair shall be a component material not otherwise provided for;* *manufactures of silk or of which silk shall be a component material not otherwise provided for;* *manufactures of worsted or of which worsted shall be a component material not otherwise provided for,* 19 per cent. 11 U. S. Stat. at L., 192	12 Stat. at Large, 185. The 22d Section of the Act of 1861 embraces the following dress fabrics, composed of mixed materials, viz.: Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool or worsted, or flax, 30 per cent. Manufacturers of cotton, linen, silk, or worsted, if embroidered or tamboured, in the loom or otherwise, by machinery, or with the needle, or other process, not otherwise provided for, 30 per cent. Manufacturers of goats' hair or mohair or of which goats' hair or mohair shall be a component material, not otherwise provided for, 30 per cent. 12 Stat. at L., 192.	12 Stat. at L., 553. The 13th Section of the Act of 1862, provides that 5 per cent. in addition to the duties heretofore exacted, shall be levied and paid on dress fabrics composed of mixed materials, viz.: Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool, or worsted, hemp, jute, or flax, five per cent. Manufactures of cotton, linen, silk or worsted, if embroidered or tamboured, in the loom or otherwise, by machinery or with the needle, or other process, not otherwise provided for, 5 per cent. Manufactures of goats' hair or mohair, or of which goats' hair or mohair shall be a component material, not otherwise provided for, 5 per cent. 12 Stat. at L., 557.	

T. H. BAILEY, dec'd.,
R. WALLACE, Administratrix, C. E. BLAKE, Assignee.

RELIEF VALVES FOR WATER-CYLINDER.

No. 7,886. Reissued Sept. 18, 1877.

No 1141
Blake
v.
San Francisco
et al

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Fig. 2

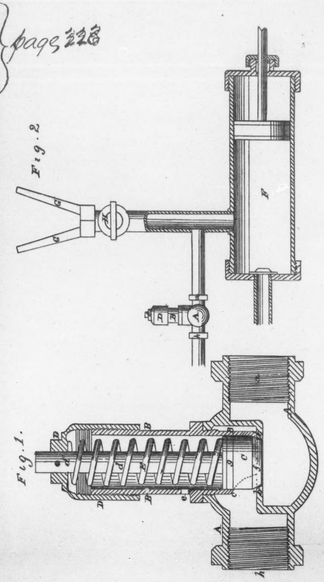
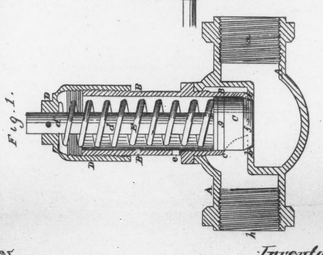


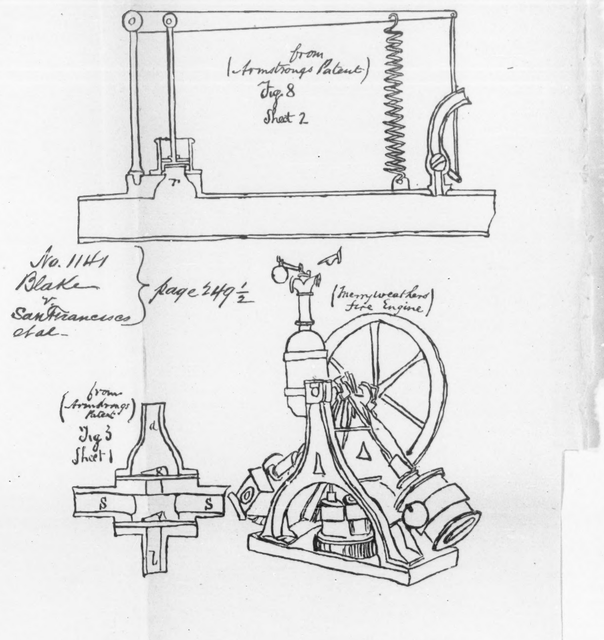
Fig. 1.



Witnesses
Geo H Strong
Jno L Boord

Inventor
Charles E. Blake
Assignee of Thos H. Bailey dec'd
by Dewey & Co
Attys.

2


from
(Armstrongs Patent)
Fig. 8
Sheet 2
No. 1141
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&c &c
page 249½
(Merryweather's)
Fire Engine
(from
Armstrongs Patent)
Fig 3
Sheet 1

T. H. Bailey,

Steam Fire Engine.

No 41,471. Patented Feb 9, 1864.

No. 1141
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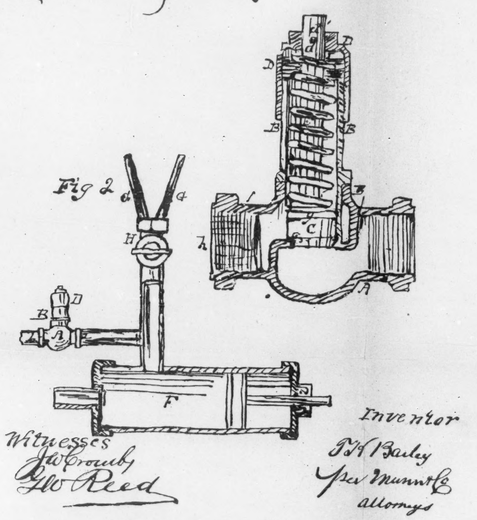
page 243.

Fig: 1.



Witnesses
H. W. Crosby
Flo Reed

Inventor
T. H. Bailey
per Munn & Co
Attorneys

4

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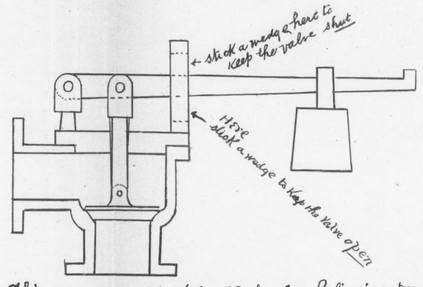
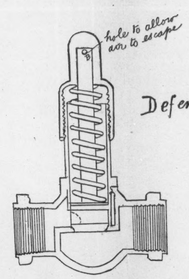
DEFENDANT'S EXHIBIT F



This is a very old style of valve for Relieving pressure long prior to 1864. It is automatic adjustable as to pressure, can be operated as a stop valve and can be kept open to any degree, in all respects as the Bailey Valve.

5



Defendants Exhibit G.
No. 11411.
Blake
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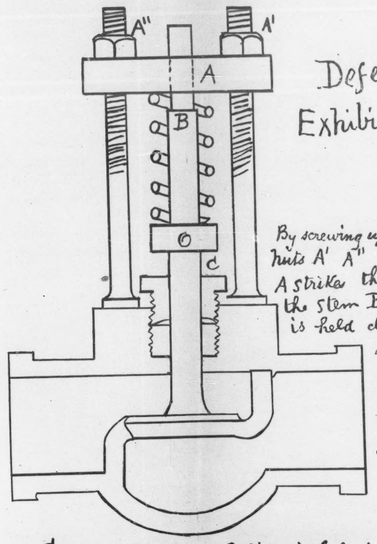
This Valve is like
Bailey's ommitting the pin holed in the stem
it is a common style and not covered by
Bailey's Patent. It has all the functions of
Bailey's Valve - By screwing down the Cap
till the top of the cavity B strikes head of Stem, you may stop the Valve on its seat



Defendants
Exhibit H.
No. 1141.
Blake
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page 278.

By screwing up the nuts A' A'' the crossbar A strikes the shoulder on the stem B and the valve is held closed —
By inserting a wedge under the collar at C the valve may be held open

Common style Relief valve will act as a screw stop valve also, date 1860 or 61 See Pardy's testimony
Has all the functions of Bailey Valve

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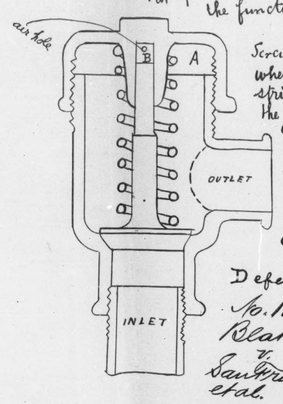
Common Style Relief Valve
Used prior to 1864 see
Pardy's testimony having all
the functions of Bailey's Valve



Screw down Cap A and when the top of stem strikes top of cavity B the Valve will be held closed. Screw the cap up and you may pass water through the valve as there will be no pressure to keep the valve closed.

Defendants Exhibit 6
No. 1141.
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Blake
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et al

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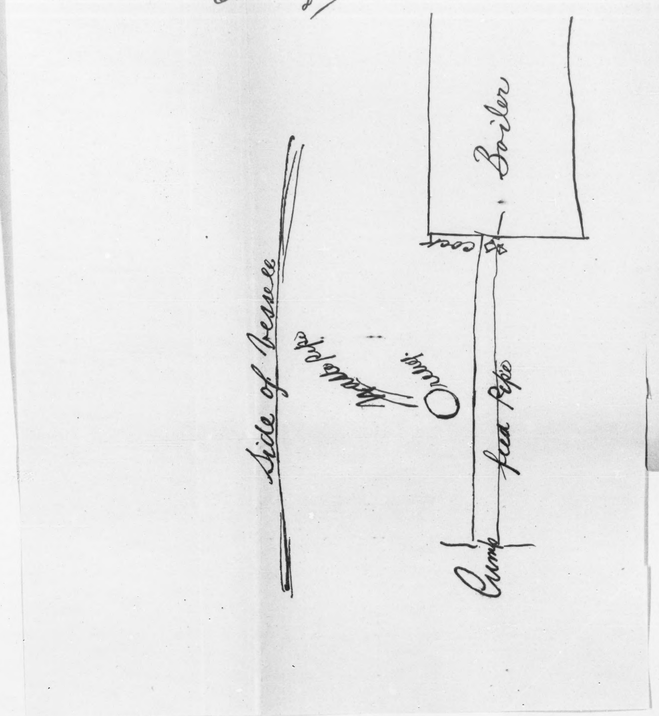
Exhibit "A."
season



Thomas H Baily
Automic Water Pressure Regulator

No. 1141.
Blake
vs
San Francisco
et al.
page 274.

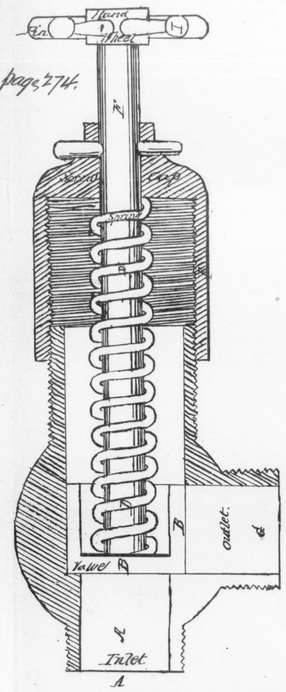


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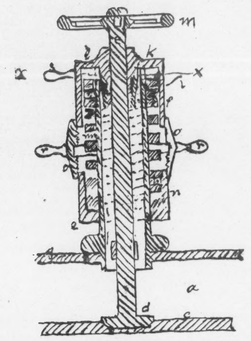
FIG. 1



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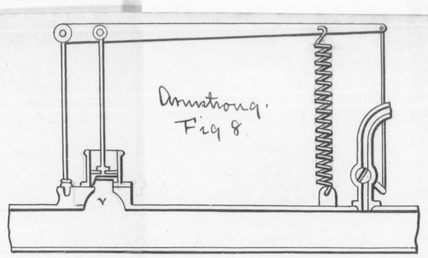
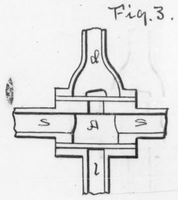
Page 283.

FIG. 2

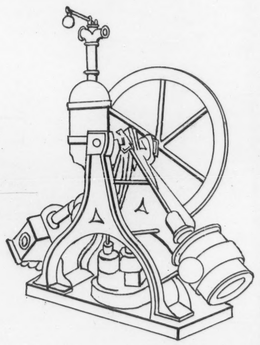


Armstrong.
Fig 8.

Armstrong.
Fig. 3.



Merry Weathers.



12

Defendant Exhibit E.

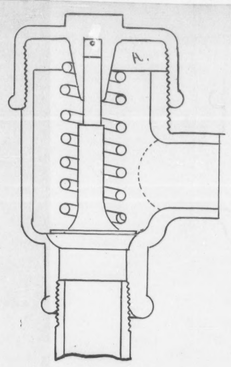


Exhibit A. Deacon's

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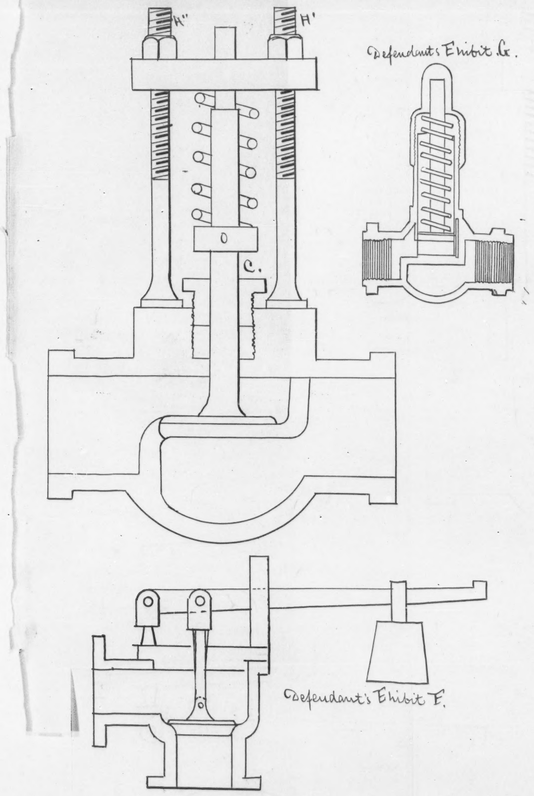
Defendant's Exhibit H.



Defendant's Exhibit Ix.

Defendant's Exhibit F.

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G. J. ORR.

Relief-Valves for Fire Engines.

No. 151,045. Patented May 19, 1874.

Fig. 1.

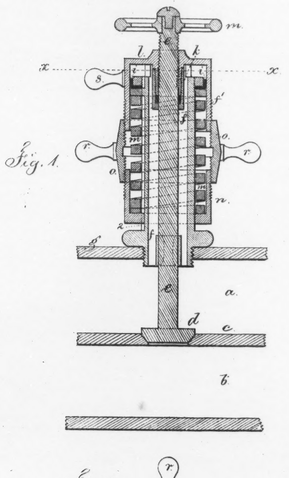
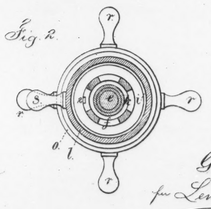


Fig. 2.



Witnesses

Chas. F. Smith

Harold Sinclair

Inventor

Gilbert J. Orr,

per Samuel N. Ferrell

atty

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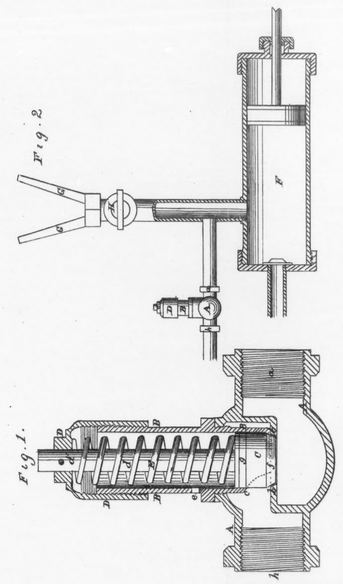
T. H. BAILEY, dec'd.,
B. WALLACE, Administratrix, C. E. BLAKE, Assignee.
RELIEF VALVES FOR WATER-CYLINDER.

No. 7,886. Reissued Sept. 18, 1877.



Witnesses
Geo H Strong
Jno L. Boone

Inventor
Charles E. Blake
Assignee of Thos H. Bailey dec'd.
by Dewey & Co.

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UNITED STATES PATENT OFFICE.

CHARLES E. BLAKE, OF SAN FRANCISCO, CAL., ASSIGNEE OF BRIDGET WALLACE, ADMINISTRATRIX OF THOMAS H. BAILEY, DECEASED.

IMPROVEMENT IN RELIEF-VALVES FOR WATER-CYLINDERS.

Specification forming part of Letters Patent No. 41,471, dated February 9, 1864; Reissue No. **7,886**, dated September 18, 1877; application filed May 11, 1877.

To all whom it may concern:

Be it known that THOMAS H. BAILEY, deceased, did invent a new and Improved Valve for Water-Cylinders of Steam Fire-Engines and other Pump-Cylinders, of which the following is a full and complete description:

Previous to this invention the only valve employed for relieving the pressure upon fire-hose to prevent it from bursting in case the water-passage through the hose should become obstructed, or in case of excessive pressure from the engine, was one operated by hand. This valve, however, was ineffectual unless the engineer, or other person whose duty it was to open and close the valve, had previous notice that the pressure was increasing or had increased, and as these emergencies are always liable to occur instantaneously without previous notice, the hose would often be bursted before the relief-valve was operated; and, besides this, the excitement which always prevails at a fire renders a strict attention to this valve almost impossible.

THOMAS H. BAILEY, however, remedied all these difficulties by applying a valve at some point between the engine or pump and hose-nozzle that is automatic in its action—that is, it is opened by any excess of pressure in the hose or pump-cylinder, so as to discharge an additional stream, and thereby relieve the inside pressure correspondingly. The valve is kept upon its seat by a spring, and it will therefore resist a pressure corresponding to the power of the spring, so that ordinarily it remains closed; but in case the pressure in the hose should be increased by any means so as to overcome the tension of the spring, and threaten to burst the hose, the spring will yield, and allow the valve to open and relieve the pressure.

Referring to the accompanying drawings, Figure 1 is a central vertical sectional view of the valve. Fig. 2 is a central vertical sectional view, on a smaller scale, showing the attachments of the valve to a pump-cylinder.

A is a casing, like that of an ordinary globe-valve, attached, by a screw-thread, *a*, to a suitable opening provided in the pump-cylinder F, between the said cylinder and the hose or pipe connections. B is a hollow cylinder, screwed into the top of the said casing, and coming to a bearing on the top of the casing, and into contact with a surface surrounding the valve-seat *b*, but having an opening, *c*, at the bottom, toward the outlet-opening of the casing. C is the valve, having a conical face, *f*, ground to fit the seat *b*, and having its upper part made in the form of a piston, and packed with leather or other soft material, *g*, to fit water-tight within the cylinder B. This valve has a stem, *d*, which fits to an opening in an adjustable screw-cap, D, which is screwed onto the top of the cylinder B. E is a spiral spring surrounding the valve-stem, between the top of the valve and the crown of the screw-cap D, and adjusted by screwing down the said cap to make it produce a greater or less pressure upon the upper side of the valve, so that a greater or less pressure may be required upon its under side to open it. *e* is a vent-hole in the cylinder B, above the valve, to provide for the escape from the said cylinder of any water that may pass above the valve. G G, Fig. 2, are two hose or pipe connections, one of which may be closed by the single cock H, leaving the other open. Separate cocks may be used for the two pipe-connections.

The spring E is intended to be so adjusted that when the hose or pipe connections are both or all open it will exert pressure enough upon the valve to keep it closed, but that, when one or both of the said connections are closed, the extra pressure upon the pump and hose or pipe, acting upon the lower surface of the valve, may raise it, and provide for a suitable escape of water through the outlet *h* of the casing A, and so relieve the pump and hose or pipes.

The construction of the upper part of the valve to fit the cylinder B like a piston is intended to prevent any accumulation of water within the said cylinder above the valve which would interfere with the free opening of the valve; and in case of any water passing the piston by reason of defective packing, it will escape by the vent *e*.

To enable the valve to be screwed down to bring all practical pressure upon the pump and hose in a trial of an engine, there is a hole, *d'*, drilled through the upper part of the screw-cap D and valve-stem *d* when the valve is

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down in its seat for the reception of a pin, by the insertion of which the valve-stem and cap can be connected rigidly, so that by slightly turning the cap the valve may be screwed down close to its seat.

A spring-valve can be variously applied to different parts of a pump or hose for the same purpose; but the above description is sufficient to illustrate the essential features.

Having thus described the invention of the said THOMAS H. BAILEY, deceased, what I claim, and desire to secure by Letters Patent as sole assignee of said patent, is—

1. The combination, with a pump-cylinder and hose of a fire-engine, of an automatic relief-valve, arranged relatively thereto, substantially as specified.

2. The combination of the valve C, stem *d'*, spring E, adjustable cap D, and pin-hole *d*, whereby the valve may be either held upon its seat with a variable yielding pressure, or may be elevated therefrom, or held immovably thereon as an ordinary screw-plug.

CHAS. E. BLAKE, *Assignee.*

Witnesses:
O. T. STACY,
F. A. BROOKS.

UNITED STATES PATENT OFFICE.

GILBERT J. ORR, OF NEW YORK, N. Y.

IMPROVEMENT IN RELIEF-VALVES FOR FIRE-ENGINES.

Specification forming part of Letters Patent No. **151,045**, dated May 19, 1874; application filed April 28, 1874.

To all whom it may concern:

Be it known that I, GILBERT J. ORR, of the city and State of New York, have invented an Improvement in Relief-Valves for Steam Fire-Engines, of which the following is a specification:

Valves for fire-engines have been made to operate automatically when the pressure of water in the hose increases in consequence of the flow through the same being checked, such valve operating to open a return water-way between the supply and delivery chambers of the pump.

My improvement is made for the purpose of removing the spring from the water-chamber, and thereby lessening the risk of injury to such spring, and, at the same time, I dispense with the piston that has been used to move the valve.

In the drawing, Figure 1 is a vertical section of the valve and operative mechanism, and Fig. 2 is a sectional plan at the line *x x*.

The water-ways *a* and *b* of the pump are separated by the partition *c*, in which is an opening for the valve *d* that is upon a spindle, *e*, passing up through guides in the tube *f*, which tube *f* is screwed into an opening in the outer casing *g* of the pump. The spindle *e* passes through a packing-gland, *k*, and is made with a screw-thread acting in the cap *l*, and a hand-wheel, *m*, is provided, and these parts are substantially similar to the ordinary relief-valve, as the valve *d* is raised or lowered to open or close the opening in the partition *c* by turning the hand-wheel *m*, screw-stem *e*, and valve. In the normal position the inside of the cap *l* rests upon the upper end of the tube *f*, and the cap extends down around the tube *f* in the form of a short tube, *f'*, and a packing, *i*, is interposed between *f* and *f'*. Around the tube *f* is a spring, *m*, of rubber or wire helix. I have shown the latter, and this spring is received within the sliding socket *n* that surrounds the tube *f*, and is kept from turning, but allowed to slide endwise by a key and slot, 2. Upon the exterior surfaces of *f'* and *n* screw-threads are cut in opposite directions, and these are connected by the sleeve *o*, that is made with right and left handed internal screw-threads, and handles *r* on the outside are employed to revolve the sleeve, and thereby draw the socket *n* toward the cap *l* and compress the spring *m*, or the reverse, and a handle, *s*, serves to hold the cap *l* and its tube *f'* and prevent their turning when the sleeve *o* is being revolved.

At the upper end of the tube *f* are notches or holes that allow the water to press against the entire under side of the cap *l*, so that whenever the pressure in the delivery water-way *a* is sufficient in its action upon the inside of said cap to raise the cap *l* and the valve *d* against the action of the spring, the water-way is opened for the return of the water to the induction side of the pump. In so doing the head *l* is moved away from the end of the tube *f*, and it returns to the same when the valve *d* is closed. The valve *d* can be operated by hand by revolving the wheel *m*, so as to raise or close the valve in the ordinary manner.

By this construction the spring is incased and outside the water-tube, and the parts are in place for the ordinary use as a relief-valve.

The spring can be adjusted by revolving the sleeve *o*, so as to set the valve to open automatically at any desired pressure.

I claim as my invention—

The packing *i*, spring *m*, socket *n*, and adjusting-sleeve *o*, in combination with the cap *l*, tube *f*, screw-stem *e*, and valve of the ordinary relief-valve, as and for the purposes set forth.

Signed by me this 24th day of April, A. D. 1874.

GILBERT J. ORR.

Witnesses:
GEO. T. PINCKNEY,
CHAS. H. SMITH.

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UNITED STATES PATENT OFFICE.

CHARLES E. BLAKE, OF SAN FRANCISCO, CAL., ASSIGNEE OF BRIDGET WALLACE, ADMINISTRATRIX OF THOMAS H. BAILEY, DECEASED.

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Specification forming part of Letters Patent No. 41,471, dated February 9, 1864; Reissue No. **7,886**, dated September 18, 1877; application filed May 11, 1877.

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The construction of the upper part of the valve to fit the cylinder B like a piston is intended to prevent any accumulation of water within the said cylinder above the valve which would interfere with the free opening of the valve; and in case of any water passing the piston by reason of defective packing, it will escape by the vent *e*.

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2. The combination of the valve C, stem *d'*, spring E, adjustable cap D, and pin-hole *d*, whereby the valve may be either held upon its seat with a variable yielding pressure, or may be elevated therefrom, or held immovably thereon as an ordinary screw-plug.

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